

<p style="text-align: right;">134</p> <p>1 LOVE 2 that in and then they made some sort of 3 adjustment somewhere to here. 4 We know that Dexia is right. We 5 take Exhibit 4 and to the extent that's a 6 business-produced document we're saying 7 okay, here's what the Board was told the 8 restatement was going to be, at this 9 particular point in time. What do we 10 know, take that away from the information 11 that's coming in here, just to show the -- 12 we know what the Dexia-related amount is, 13 that gives us -- that gives us the 14 Dexia-related amount, the rest has got to 15 be in the "Other" area, "Other" areas, 16 that's the number that comes out below and 17 the restated income is as it is here. 18 For restated income this is the 19 report that was used (indicating). For 20 Dexia our report was used. For some of 21 the numbers that came in here this was the 22 number that was used (indicating). 23 Now, we don't know that this 24 number -- we do know that we're relying on 25 this number, they're saying that this is</p>	<p style="text-align: right;">136</p> <p>1 LOVE 2 Q. What were you talking about? 3 A. It's just an analogy to a fraud. 4 When you have fraud, and most frauds start 5 small at the beginning and they continue 6 each year and they grow, and if you stop 7 the fraud at the beginning the fraud that 8 occurs afterwards doesn't occur. If you 9 don't stop the fraud at the beginning it 10 continues in the general pattern to grow 11 and continue. 12 If you stop a killer or catch a 13 killer initially, and that person is a 14 serial killer, he's not going to be a 15 serial killer if he's stopped after the 16 first one. If he's second or third it's 17 gonna stop the killings in the fourth or 18 fifth instance if that is, in fact, the 19 person he killed. 20 So it's just a simple analogy in 21 a fraud, that if you nip it in the bud at 22 the beginning all the rest that comes 23 after doesn't occur. 24 Q. I'm just curious about the 25 analogy, I mean, you don't in any other</p>
<p style="text-align: right;">135</p> <p>1 LOVE 2 correct, that these were the people who 3 were in there with the numbers 4 contemporaneously at the time, so we're 5 willing to accept a \$4 million, maybe 6 issue at some point in time, that that 7 number maybe should be in the 22, that's 8 the only other number it can be in, but 9 that's fine. I mean, that's not what 10 we're doing this for. We're simply doing 11 this to show how Dexia -- Dexia's numbers 12 fit with the total numbers that were in 13 Exhibit 4 for the restatement. 14 Q. And the way that you made 15 Dexia's numbers fit with Exhibit 4 was by 16 using this "Other" category that you just 17 calculated by either adding or subtracting 18 a number from the total in Love Exhibit 4; 19 correct? 20 MS. DYER: Objection to form. 21 A. Yes. 22 Q. You said something a little 23 while ago about serial killers; do you 24 remember that? 25 A. Sure.</p>	<p style="text-align: right;">137</p> <p>1 LOVE 2 way think that overstating revenue in a 3 financial statement is analogous to 4 killing people, do you? It's just that 5 there's a series that has to be stopped? 6 A. I gotta tell you it really hurts 7 people when you have a fraud like this. 8 It really hurts people, because some 9 people have their retirement money locked 10 into these companies. People who worked 11 at these companies didn't have a place to 12 work after all this happened. 13 There were people that are hurt 14 very badly. No one was killed. I don't 15 know, maybe someone did commit suicide 16 because they didn't have the money they 17 thought they could use to live on the rest 18 of their lives, it was gone, it was 19 dissipated, so I don't know. 20 I think the analogy is fine. 21 I'm not saying that there's a killer here, 22 I'm saying that when you nip something in 23 the bud it doesn't happen in the future. 24 Q. Sir, do you believe that the 25 Baker Plaintiffs who hired you are in any</p>

<p>1 LOVE 2 danger of going hungry or committing 3 suicide over this? 4 MS. DYER: Objection to form. 5 A. I didn't say anything about the 6 Baker people. I said about all of the 7 people who were hurt by this fraud, that's 8 what I spoke to, not the Bakers. 9 Q. Are you planning to testify at 10 trial about the people who were hurt by 11 what you characterize as a fraud? 12 MS. DYER: Objection to form. 13 A. What I characterize -- well, 14 first of all, let me say that I am not the 15 only person characterizing this as a 16 fraud. Bryan Cave in its report 17 characterized it as a fraud. KPMG in its 18 report characterized it as a fraud. Your 19 client's been indicted in Belgium because 20 of what went on here and what is -- what 21 the Belgium authorities considered a fraud 22 and the SEC considered it a fraud and had 23 a statement of charges against your 24 client, or against L&H, that it was a 25 fraud that occurred at the time.</p>	<p>138</p> <p>1 LOVE 2 Brussels Translation Group you say that 3 \$18 million of revenue -- sorry, let me 4 point it to you -- in footnote one of this 5 chart you say that \$18 million of Brussels 6 Translation Group revenue recorded in 1998 7 has been allocated amongst the four 8 quarters. 9 Do you know if that's how L&H 10 actually recognized revenue from the 11 Brussels Translation Group transaction? 12 A. No, that's why we allocated it. 13 Q. So you don't know one way or the 14 other exactly how much revenue Lernout & 15 Hauspie recognized in each of the four 16 quarters in 1998; correct? 17 A. We know the total for the year, 18 yes, but not the individual amounts in 19 each of the quarters. 20 Q. Your report -- 21 A. And that's why it's specified in 22 here, so no one's misled by it. 23 Q. Your report states that certain 24 employees of Artesia Bank were 25 specifically informed about U.S. GAAP</p>	
<p>1 LOVE 2 Q. Sir, my question is do you 3 expect to testify at trial about the 4 suffering of the victims of what you are 5 characterizing as a fraud? 6 MS. DYER: Objection to form. 7 A. I am not going to testify about 8 the victims of the fraud. I am not the 9 only one characterizing this as a massive 10 fraud. 11 Q. I understand that. Okay, thank 12 you for answering my question. 13 Are you going to testify about 14 the fact that the bank is subject to 15 criminal proceedings in Belgium? 16 MS. DYER: Objection to form. 17 A. I don't know what you mean, if 18 I'm asked the question am I aware of the 19 fact that the bank was indicted for fraud 20 in Belgium and there's no objection and I 21 can answer it, I'd say yes, I am aware of 22 it. 23 Q. And -- well, fair enough. 24 On this chart, going back to 25 Exhibit 7A, you say specifically with the</p>	<p>139</p> <p>1 LOVE 2 requirements; correct? 3 A. Yes. 4 Q. Do you know whether the 5 employees who received that information 6 understood it? 7 MS. DYER: Objection to form. 8 A. Well, they certainly understood 9 it enough to take and have side letters 10 relating to the guarantees. They did 11 understand it enough to develop the CDS, 12 the Credit Default Swap, and I'll use CDS 13 for that, when there was a problem with 14 the guarantees in order to mask the 15 relationship of these related parties of 16 L&H in this transaction. 17 They understood it enough to act 18 that way, so I don't understand. They did 19 understand it. They did understand it and 20 they said that in there, that in order to 21 recognize revenue they cannot put the 22 names of these individuals in the loan 23 agreement, they gotta get them outside the 24 loan agreement so no one sees it when they 25 look at the loan agreement.</p>	<p>141</p>

<p>1 LOVE 2 Q. Do you expect to testify at 3 trial, sir, an expert on what people 4 within the bank understood at the time of 5 these various transactions? 6 MS. DYER: Objection to form. 7 A. I'm going to testify -- I'm 8 going to testify about the documents that 9 relate to what the bank did, the credit 10 file documents and how they relate to what 11 the bank did to mask the fraud that was 12 perpetrated. 13 I don't know if that answers 14 your question. But it's in the documents, 15 it's clear, they did it, they did it with 16 intent and purpose, as you can see, from 17 the document, from the documents. It's 18 documentary evidence that I'm testifying 19 on. The trier of fact will make up their 20 own mind. 21 Q. Let me ask the question this 22 way. The kinds of answers that you have 23 given to me today about the intent and the 24 understanding of Artesia employees, those 25 are the same type of answers that you</p>	<p>142</p> <p>1 LOVE 2 documents, the individuals, the individual 3 lending officers say that they are going 4 to -- they cannot put the names of the 5 individuals in the loan, they are gonna 6 put it in a side agreement outside of the 7 loan so it looks as if there is no 8 relationship between the LDCs financing 9 and the money that's going over as revenue 10 to L&H and any L&H-related individual and 11 L&H itself. 12 It's in the record. I'm going 13 to testify as to what's in the record and 14 what it shows, and to me as a fraud 15 examiner it shows a mass -- fraud was 16 discovered -- was concealed, the 17 concealment of the fraud itself is 18 directly attributable to what Dexia did. 19 I mean, they had the side 20 letters, they took them, their internal 21 auditor, their counsel was against side 22 letters and side agreements, and, as it 23 comes out in some of the other things, it 24 was against Belgian banking regulations as 25 well to have these side agreements.</p>
<p>1 LOVE 2 expect to give at trial? 3 MS. DYER: Objection to form. 4 Mischaracterizes what he stated. 5 Hold on. You asked him about 6 intent and he has made clear he's not 7 testifying to what people are 8 thinking, he's not testifying as to 9 things beyond the documents. 10 So your question seriously 11 misleads and mischaracterizes, and 12 it's incomprehensible anyway, that are 13 these the kind of things he's going to 14 testify to. 15 Q. Sir, do you understand my 16 question? 17 A. Let me hear the question back. 18 Q. My question, sir, is the kinds 19 of answers that you are giving to me about 20 participation in a fraud and intent and 21 understanding, are these the same kind of 22 answers that you expect to give at trial? 23 MS. DYER: Same objection. 24 A. Not intent. The documents show 25 that a fraud was committed. The</p>	<p>143</p> <p>1 LOVE 2 Q. And your view is that must have 3 been intentional; correct? 4 MS. DYER: Objection to form. 5 A. My view is that's what the 6 record shows, okay? 7 Q. Don't you think it is up to the 8 jury to show what the record shows? 9 MS. DYER: Objection to form. 10 Calls for a legal conclusion. 11 A. I will, as an expert, will 12 assist the jury. I, as an expert on 13 fraud, will point out those documents and 14 how they feed into the fraud and how the 15 people were involved. 16 The jury will make up its own 17 mind. I'm not here to make up the jury's 18 mind, but I'm here to assist the jury. 19 Q. And the way you are going to do 20 that is just by pointing to documents and 21 telling them what conclusions to reach 22 from those documents; correct? 23 MS. DYER: Objection to form. 24 That mischaracterizes his prior 25 testimony.</p>

<p>1 LOVE 2 A. I'm going to point out all of 3 the documents that are in here and I'm 4 going to say as a fraud examiner this is 5 the way the fraud occurred. The fraud 6 doesn't occur if it gets the light of day. 7 They'll make up their mind 8 whether or not there's intent. 9 I'll show that they wrote on 10 these the documents what they were going 11 to do, specifically what they were going 12 to do, so that L&H will be able to take 13 the money that's coming through a 14 financing supported by these parties 15 related to L&H and funnel it into L&H as 16 revenue, as fraudulent revenue. That's 17 what I'm going to testify to, Counselor. 18 Q. And you are going to testify 19 about that just based on the selection of 20 documents that you have reviewed in this 21 case; correct? 22 MS. DYER: Objection to form. 23 A. Before I testify there will be 24 additional testimony given by other 25 people. The jury will hear that</p>	<p>146</p> <p>1 LOVE 2 Do you think that U.S. GAAP 3 requirements are so clear and easy to 4 understand that anyone who reads a short 5 statement about them can apply them to a 6 specific transaction? 7 MS. DYER: Objection to form. 8 A. I believe that Dexia people got 9 precise instructions about what could not 10 occur. They didn't interpret anything. 11 There's no interpretation here. 12 There's no judgment here. 13 They were told certain things by 14 KPMG, by the attorneys for L&H. They were 15 given some documents. They don't have to 16 interpret the documents when you're being 17 told. There's no interpretation here at 18 all. 19 Q. Sir, do you know what they were 20 told when they were given those documents? 21 MS. DYER: Objection to form. 22 A. I only know what's in the 23 documents themselves and I see what their 24 action is after it occurs. 25 Q. So isn't it possible, sir, that</p>
<p>147</p> <p>1 LOVE 2 testimony, as you know -- you know what a 3 trial is -- they'll hear it. 4 I will testify as to what I 5 found, the documents that I have, 6 basically -- and -- and unless new 7 documents come to light, the documents 8 that are in here or any documents we may 9 discuss today, any document that comes up 10 at trial I guess I could be shown, you 11 could show me a document. 12 I'm going to testify as to what 13 the document says in the development and 14 pattern of fraud. 15 The intent is going to be up to 16 them. The decision as to whether fraud 17 occurred, even though I may believe fraud 18 has occurred, I know fraud has occurred, 19 they, the jury, are going to decide. 20 Q. Okay, sir, I think understand 21 now. 22 You said in your report, as you 23 mentioned before, that certain employees 24 of Artesia Bank were specifically informed 25 about U.S. GAAP requirements.</p>	<p>149</p> <p>1 LOVE 2 things were said orally to people within 3 the bank about the meaning of these 4 documents and you're not aware of those 5 conversations? 6 A. I'm not aware -- 7 MS. DYER: Objection. Objection 8 to form. 9 A. I cannot possibly be aware of 10 any conversation that's not documentation 11 in the credit file. 12 I would expect, as a banker, 13 that that be documented in those credit 14 files, specifically because those credit 15 files are showing that they're doing what 16 they need to do to allow L&H to take 17 something into revenue when they know who 18 the guarantors of the loan are. 19 There's nothing unclear about 20 that. 21 They know that Lernout & Hauspie 22 and Bastiens and Willaert are involved. 23 They know that. It's throughout the 24 bank's records that they see that. 25 And they know that they can't</p>

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<p style="text-align: right;">150</p> <p>1 LOVE 2 connect them up with this borrowing. They 3 know, and the bank records -- the bank 4 credit files show clearly, to any banker 5 reading it, that the whole basis of this 6 loan is not an LDC that's a phantom 7 company that doesn't sometimes exist as of 8 date they gave the loan that hasn't done 9 anything, that's not the basis of giving 10 the loan.</p> <p>11 The basis of giving the loan is 12 the guarantee of the people that they 13 think have the financial strength. Those 14 people are clearly related partners to L&H 15 and they hide that fact. That's what I'm 16 going to testify to.</p> <p>17 MR. BUTLER: Could you read my 18 original question, please.</p> <p>19 [The requested portion of the 20 record was read.]</p> <p>21 Q. You answered the question, sir. 22 Just one last question before we 23 take a break for the tape.</p> <p>24 You mentioned that as a banker 25 you would expect something. Have you ever</p>	<p style="text-align: right;">152</p> <p>1 LOVE 2 to testify as an expert about what should 3 be included in a credit file in a Belgian 4 bank; correct?</p> <p>5 MS. DYER: Objection to form.</p> <p>6 Q. Is that your testimony?</p> <p>7 A. My testimony is I'm qualified to 8 testify to what should be -- to testify 9 what should be in a credit file so as not 10 to mislead the reader of the credit file.</p> <p>11 MR. BUTLER: Let's take a break, 12 probably a good time to break for 13 lunch, if that's okay with you, or we 14 can continue a little longer and take 15 lunch, it's fine with me.</p> <p>16 THE VIDEOGRAPHER: Off the 17 record. The time is 12:30. This is 18 the end of tape two.</p> <p>19 (Whereupon, a brief recess was 20 taken).</p> <p>21 THE VIDEOGRAPHER: We're back on 22 the record. The time is 12:40. This 23 is the beginning of tape three.</p> <p>24 MR. BUTLER: Let's mark this as 25 the next exhibit.</p>
<p style="text-align: right;">151</p> <p>1 LOVE 2 worked as a banker, sir? 3 A. Yes, but a long time ago, and 4 I wouldn't bring it up as a part of my 5 credentials, I was a banker, I was an 6 internal auditor in a bank between the 7 time I graduated college and the time I 8 went to serve three years, one month and 9 nine days in the Army, for about a 10 six-month period I was an internal auditor 11 at Manufacturers Hanover Trust Company; 12 but I've also audited banks for over 37 13 years, I've been an auditor of banks for 14 over 37 years, and I've been on the Board 15 of Directors and chaired the audit 16 committee of a bank.</p> <p>17 I know what credit looks like. 18 I taught credit overseas in Europe, credit 19 analysis overseas in Europe, in the Middle 20 East, but we did in nicely in Larnaca on 21 Cyprus rather than in the Middle East, 22 and we did it in Singapore, okay? So I 23 know what credit files look like, I've 24 looked at credit files around the world. 25 Q. And you feel you are qualified</p>	<p style="text-align: right;">153</p> <p>1 LOVE 2 (Whereupon, the above-mentioned 3 document bearing Bates numbers DBB6796 4 through 6801 was marked Love Exhibit 6 5 for identification.)</p> <p>6 MR. BUTLER: I've marked as 7 Exhibit 6 a document bearing Bates 8 numbers DBB6796 through 6801.</p> <p>9 CONTINUED EXAMINATION BY MR. BUTLER:</p> <p>10 Q. Sir, have you seen this document 11 before?</p> <p>12 A. Yes.</p> <p>13 Q. And you referenced this document 14 at the bottom of page 15 of your report in 15 footnote 24. Can you just confirm that?</p> <p>16 A. Yes.</p> <p>17 Q. But also in the body of page 15 18 at the bottom you refer to a fax from 19 L&H's Chief Financial Officer to a person 20 named Patrick Faict; do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And is this the fax that you're 23 referring to in your report on page 15?</p> <p>24 A. Yes.</p> <p>25 Q. And you also refer to that fax</p>

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<p>1 LOVE 2 on page 16? 3 A. Yes. 4 Q. And continuing on pages 17 and 5 18, are you still referring to the same 6 fax when you refer to a fax from L&H's CFO 7 or a fax to Mr. Faict? 8 A. I just want to look at it. 9 Yeah, that generally would be correct if 10 we're talking about this particular fax 11 and I haven't introduced any -- any other 12 fax at this point in time or any other 13 document at this point in time, but let me 14 take a look. In the fax, okay. 15 Wait a minute. In the fax Mr. 16 Faict received from L&H the following 17 guideline was specifically highlighted: 18 "If the enterprise is obligated to repay 19 any of the funds provided by the other 20 parties regardless of the outcome of the 21 research and development, the enterprise 22 shall estimate and recognize a liability." 23 That is referring to a 24 DBB074970. It's not in the package you 25 gave me.</p>	<p>154</p> <p>1 LOVE 2 sometimes to the other; is that fair to 3 say? 4 A. That could be correct, yeah. 5 That undoubtedly is because it happened 6 here. 7 Q. So my question, sir, is when you 8 refer to a fax to Mr. Faict on pages 15, 9 16, 17, 18, 19 and maybe even 20 of your 10 report, are you always referring to this 11 same fax? 12 A. Well, I have to look at each of 13 the references to see that that's correct. 14 I just want to be sure. Okay. 15 (Witness peruses exhibits.) 16 A. What page did you go up to, 17 Mr. Butler? 18 Q. Either 19 or 20. Looks like you 19 continue to quote it on page 20 at the 20 top. 21 A. Yes, through that, through that 22 area when I talk about and attribute 23 something to the fax that Mr. Faict, 24 Faict? 25 Q. I say Faict but I've never met</p>
<p>1 LOVE 2 Is there another fax or is there 3 more to this package? But it doesn't look 4 like there would have been. 5 Q. That's a good question, sir. 6 MR. BUTLER: Let me mark this as 7 the next exhibit. 8 (Whereupon, the above-mentioned 9 document bearing Bates numbers 10 DBB74968 to 4973 was marked Love 11 Exhibit 7 for identification.) 12 MR. BUTLER: I've marked as 13 Exhibit 7 a document bearing Bates 14 numbers DBB74968 to 73. 15 Q. Sir, is this the same fax that I 16 just handed you as Love Exhibit 6? 17 (Witness peruses exhibit.) 18 A. Yes, yes, yes. 19 Q. So these are just two different 20 versions of the same document or two 21 different copies of the same document with 22 different Bates numbers on them; right? 23 A. Yes. 24 Q. And sometimes in your report you 25 refer to one set of Bates numbers and</p>	<p>155</p> <p>1 LOVE 2 him, I don't know how he pronounces his 3 name. 4 A. Faict, I'll take that 5 pronunciation. 6 Received. It is to these two 7 documents which are the same, these two 8 exhibits, that being Exhibit 6 and Exhibit 9 7. 10 Q. Since they are the same let's 11 set aside Exhibit 7 and focus on Exhibit 12 6. 13 The first page is just a cover 14 page with some writing in Dutch on it, but 15 the second to the last page appears to be 16 some document that describes some U.S. 17 GAAP. 18 Can you tell me what that 19 attachment is or what these attachments 20 are? 21 MS. DYER: You are referring to 22 06800 and 801? 23 A. No, I'm referring to DBB6797 24 through 801. 25 MS. DYER: Okay, I thought you</p>

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<p>1 LOVE 2 said second to the last page. 3 A. Second page to the last page, I 4 think is what you meant? That's how I 5 heard it. 6 Q. Correct. 7 A. The first one R-36, related 8 parties, this is -- the FASB publishes 9 documents on GAAP. They're promulgations 10 of GAAP, which is at the, you know, 11 highest level of GAAP. 12 They do it in two ways. They do 13 one what they call current text, which 14 means that it's more -- it includes all 15 the current changes to the text and it 16 flows well for the reader who's looking 17 for GAAP at that particular date, what is 18 GAAP at that particular date. 19 They come out on June 1st, I 20 believe, of every year. 21 They also publish a second set 22 of books that is the original pronouncements. 23 The original pronouncements also 24 are adjusted each year, but they do that 25 through some, you know, coloring,</p>	<p>158</p> <p>1 LOVE 2 A. Those are other promulgated or 3 -- the FASB, where it says FASB Statement 4 57 and Statement 109, there may be -- I 5 said this was the current text, okay? 6 Those statements were statements that the 7 FASB made subsequent to the related party 8 statement that may -- that will have, um, 9 will have clarifi -- not clarification, 10 they may be in a particular area and they 11 will make changes to the original, I said, 12 remember when I said there was original 13 pronouncements? To the original 14 pronouncements or they may say something 15 in addition to that. So it's updating the 16 GAAP in the related party area and that's 17 why you have that reference to FASB 18 Statement 57 and FASB Statement 109. 19 ARB 43, that was around even 20 before I was in the profession. It's 21 Accounting Research Bulletin 43. It's one 22 of the basic books, foundational books in 23 accounting, but slowly but surely it's 24 being outdated and incorporated into other 25 pronouncements.</p>
<p>159</p> <p>1 LOVE 2 highlighting changes that were made since 3 the original text came out, particularly 4 where that portion of the original 5 pronouncement isn't effective any more or 6 it has been changed by an intervening 7 promulgation of GAAP. 8 So in R36, when you're looking 9 in the index you go to R, then R36 is 10 "Related Parties," because there will be a 11 number of different Rs, as you see for 12 R55, which is the second piece of this, 13 which is "Research and Development 14 Arrangements." 15 So these come from the current 16 text and 19 -- well, one has a copyright, 17 copyright is 1996, that would be as of 18 June 1, 1996. 19 Q. If you look on page DBB6797 20 where the beginning of R36 "Related 21 Parties," it says underneath "R36 Sources" 22 and refers to it looks like three 23 documents, ARB 43, FASB Statement 57 and 24 FASB Statement 109. What are those 25 sources that are referenced here?</p>	<p>161</p> <p>1 LOVE 2 Q. You used the term "original 3 pronouncements." Are these sources 4 referenced here some of the original 5 pronouncements? 6 A. They are -- they are all, all 7 three, would be original pronouncements, 8 yes, and you'll find all three in those 9 source books coming from the FASB. 10 Q. And did I understand you 11 correctly that this current text document 12 would be summarizing and perhaps updating 13 those original pronouncements? 14 A. Well, it updates the original -- 15 MS. DYER: Objection to form but 16 you can go ahead. 17 A. It updates the original 18 pronouncement here for related parties, 19 what we have here. This is the related 20 party accounting at this particular point 21 in time, and it says its sources are these 22 two statements and ARB 43. 23 As a matter of fact I happen to 24 have it here -- I hate to remember 25 numbers -- but 57 may be related parties,</p>

<p>1 LOVE 2 I don't know, um, so that that's the 3 source of the current text here. 4 Q. If a person wanted to get a 5 complete understanding of the GAAP 6 relating to related parties, would it be 7 sufficient just to read over this current 8 text document or would you also have to go 9 back and look at the original 10 pronouncements that are cited here? 11 MS. DYER: Objection to form. 12 A. You should be able to look at 13 the original -- the -- what's cited here 14 or what's here in the current text, um, at 15 highest level. There may be other 16 levels of authority that are outside of 17 these what we call the most authoritative 18 levels, the FASB's pronouncements. 19 Q. So if I wanted to get a complete 20 understanding of related party 21 transactions, what other documents besides 22 this would I need to look at to get that 23 understanding? 24 MS. DYER: Objection to form. 25 A. You'd have to look at all of the</p>	<p>162</p> <p>1 LOVE 2 of what would upset the apple cart. 3 Q. Sir, my question was simply 4 whether you would have to look at 5 documents other than this to get a 6 complete understanding of the subject. 7 MS. DYER: Objection to form. 8 A. I was giving you an example of 9 where the related party -- I'm sorry, 10 because they were attached together -- an 11 example of where the related party issue 12 or pronouncement would be, I guess, used 13 and this is the related party, this tells 14 you who the related party is up on top. 15 So, you know, you would look 16 here, but you may look at other documents 17 as well; but this is one of the primary 18 places that you would look. 19 Q. And would you give the same 20 answer for the second of these documents, 21 the R55 Research and Development 22 Arrangements, is it fair to say to get a 23 complete understanding of the research and 24 development arrangements and the GAAP that 25 applies to those arrangements this</p>
<p>1 LOVE 2 documents, all of the GAAP. 3 You may, you know, there's a 4 second thing on here, like R&D, research 5 and development arrangements, where 6 they'll talk about related parties in 7 there. 8 It doesn't -- it doesn't change 9 the GAAP, but, you know, if you look at 10 8C, they have it as 106C here, it's 8C in 11 the original pronouncement, okay, and it 12 says a significant related party 13 relationship between the enterprise and 14 the parties funding the research and 15 development exists at the time the 16 enterprise enters into the arrangement, 17 and if you look above that's a presumption 18 that the enterprise will repay the other 19 parties, and that's one of the things that 20 would not allow you to not record an 21 expense for a disbursement related to a 22 related party transaction. 23 If you look at 105, you know, 24 you read through on each one of these, 25 104, 105 and then 106 gives you examples</p>	<p>163</p> <p>165</p> <p>1 LOVE 2 document would be a good starting place 3 but you might also look to other sources? 4 MS. DYER: Objection to form. 5 A. Yes, you may, but that is where 6 -- this is -- this is the highest level of 7 pronouncement, because it's coming from 8 the FASB. 9 Q. Do you know why the CFO of 10 Lernout & Hauspie was sending this fax to 11 somebody at Paribas? 12 MS. DYER: I'm going to object 13 to form. 14 A. Tell them it's the information 15 on related parties, and the rest is in 16 Dutch or Flemish, or whatever. So it's 17 obvious you can see that he's, you know, 18 it's the information concerning related 19 parties. 20 Q. Sir, once again, I'm not asking 21 you to tell me what you think is obvious 22 from reading documents, I'm asking if you 23 know -- 24 A. Exactly -- 25 Q. -- why the CFO was sending this</p>

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<p>1 LOVE 2 document to someone at Paribas. 3 MS. DYER: Objection to form. 4 A. You know, I may not know what 5 was in his mind, but this was the time 6 that there were discussions about the DC 7 -- and I'll use "DC" for Dictation 8 Consortium Group, if that's okay, and I'll 9 use "BTG" for the Brussels Translation 10 Group, or Belgium Translation Group -- 11 Q. Brussels Translation Group. 12 A. Brussels, okay. 13 Q. I'll understand those 14 abbreviations, sir. 15 A. This is about the time that they 16 were discussing how these things -- how 17 these relationships, how they should 18 structure this movement of funds and the 19 loans into L&H so L&H could record them as 20 revenue. 21 This is in -- this was looks 22 like 3/20/96, so it's towards the end of 23 the first quarter in 1996. 24 There's other documents -- 25 there's a lot of other documents that went</p>	<p>166</p> <p>1 LOVE 2 A. I'm sorry. When you get this 3 document along with the other documents 4 that the bank received over a period of 5 time and you're specifically told no 6 judgment, you don't have to go back and 7 understand the GAAP that's in here, they 8 tell you, no related party activity at 9 all, otherwise L&H is not going to allow 10 us to take this in as revenue, then they 11 do the side letters so that there's no 12 apparent involvement of the L&H management 13 and major shareholders in the transaction 14 that's funding the revenue coming into 15 L&H; so if you look at it in context with 16 everything that's there rather than one 17 piece at a time, it's telling them what 18 they have to do, what their problem is, 19 why we can't have this in here and you are 20 saying okay, you don't want that in 21 because you want revenue even though 22 you're not supposed to have revenue, so 23 we'll take it out, we'll take it out and 24 put it in a guarantee that's a side 25 letter, in context; but this is why a lot</p>
<p>167</p> <p>1 LOVE 2 over to the bank. There are a lot of 3 other documents with specific restrictions 4 that were also sent to the bank at various 5 times, including a letter from the partner 6 at KPMG in Brussels that relate to the 7 same particular issue. 8 So that's all, I'm just putting 9 it in context. It's something that went 10 to the bank to inform them of the U.S. 11 GAAP related party and R&D provisions that 12 L&H had to comply with. 13 Q. Is it possible that the CFO sent 14 this to Paribas Bank because he wanted to 15 show Paribas that the structure of the 16 proposed transaction complied with U.S. 17 GAAP? 18 MS. DYER: Objection to form. 19 A. From the documents that I've 20 read, and I've seen the bank's documents 21 and the credit files, it was helping them 22 structure it so that they would leave out 23 the related party aspect of the loan so 24 that they could record it as income. 25 Q. Whatever --</p>	<p>169</p> <p>1 LOVE 2 of these documents were going over. 3 Q. Sir, my question is I think you 4 already testified that you don't know what 5 was in the minds of these people when 6 these documents were going back and forth; 7 even despite the answer that you just gave 8 do you still believe that you don't know 9 what people were thinking at the time? 10 MS. DYER: Objection to form. 11 A. I don't know what is in anyone's 12 mind, only a mind reader can tell you 13 that, if they can, if there's any such 14 person; but you can see from the documents 15 in the record, at least, what is 16 happening. 17 I don't know what's in the 18 person's mind when he says let's use a 19 side agreement, okay, because Mr. Willaert 20 I guess who was doing most of the 21 negotiating here on these loans said you 22 can't mention us in here, and they give 23 them documents like this to show them what 24 the -- I don't know what it is. I can 25 just say what was there.</p>

43 (Pages 166 to 169)

<p>1 LOVE</p> <p>2 Q. Sir, do you believe that Lernout 3 & Hauspie was providing this to people at 4 Paribas Bank in order to show them that 5 L&H was not complying with U.S. GAAP?</p> <p>6 MS. DYER: Objection to form.</p> <p>7 A. I'm sorry, was not complying?</p> <p>8 MS. DYER: Can you read the 9 question back.</p> <p>10 [The requested portion of the 11 record was read.]</p> <p>12 MS. DYER: Objection to form.</p> <p>13 A. You know, you asked me before if 14 I was a mind reader and I said I can't 15 read minds but I can look at the documents 16 that they got and what they did, how they 17 acted on it, because that's documented.</p> <p>18 So how would I know that they're 19 sending it to them to comply that they're 20 not complying with GAAP when they say in 21 the records that in order to get the 22 revenue, which they're not supposed to get 23 if it's a related party involvement, were 24 going to take the related parties and push 25 them off into a side agreement so people</p>	<p>170</p> <p>1 LOVE</p> <p>2 confederates what they have to do or show 3 them why they have to do something to hide 4 what they're doing.</p> <p>5 You know, fraud doesn't work if 6 it sees the open light of day and 7 sunshine, okay? Fraud's gotta be 8 concealed to work, and to work well.</p> <p>9 So they need a collaborator on 10 the concealment. And that's what I see 11 here, as a fraud investigator, and it's a 12 classic fraud with the side agreement to 13 keep people from really knowing what's 14 going on.</p> <p>15 Q. Sir, is it your testimony that 16 you interpret this fax sending some 17 provisions of U.S. GAAP to an employee of 18 Paribas as an effort to conceal something 19 about the fraud?</p> <p>20 MS. DYER: Objection.</p> <p>21 Q. Is that what you said?</p> <p>22 MS. DYER: Objection.</p> <p>23 Mischaracterizes his testimony and 24 Objection to form.</p> <p>25 A. I said that there are a lot of</p>
<p>1 LOVE</p> <p>2 can't see them.</p> <p>3 Q. Sir, let me ask the question 4 this way. You say you are an expert in 5 investigating fraud; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you have the opinion, I 8 believe, that the management of Lernout & 9 Hauspie was involved in a fraud here; is 10 that fair to say, among other people but 11 the management was certainly in on it; 12 right?</p> <p>13 MS. DYER: Objection to form.</p> <p>14 A. They're participants in the 15 fraud, of course, that's -- that's also 16 known and it's also in all of those 17 documents I've mentioned before.</p> <p>18 Q. So in your experience as a fraud 19 investigator, is it usually the case that 20 people who are involved in a fraud go 21 around telling other people about their 22 fraud?</p> <p>23 A. No, they --</p> <p>24 MS. DYER: Objection to form.</p> <p>25 A. No, they usually tell the</p>	<p>171</p> <p>1 LOVE</p> <p>2 documents, this isn't the only one these 3 people received at the bank, the credit 4 people received at the bank. There are 5 documentation in their credit files, okay, 6 that says it, that says everything that's 7 in here explicitly.</p> <p>8 No judgment, no if it does or if 9 it doesn't do, and they say they want to 10 get it into revenue and we can't get it 11 into revenue unless it's a stand-alone 12 type of transaction, and there's no 13 related party issues involved here, so 14 what they do then is they agree -- you're 15 shaking your head, Counsel.</p> <p>16 Q. I'm marveling, sir, but 17 continue.</p> <p>18 A. What they do is they work with 19 the company to conceal the relationship of 20 the guarantors of the loan with the loan 21 so it's not apparent to people.</p> <p>22 Q. I think you told me before that 23 you are not aware of any of the oral 24 conversations that occurred around this 25 time?</p>

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<p>1 LOVE 2 MS. DYER: Whoa. You're 3 suggesting there are oral 4 conversations? Are you testifying as 5 to oral conversations? 6 MR. BUTLER: I don't understand 7 your objection, Karen. 8 MS. DYER: There is no record 9 that there were any oral conversations 10 here. 11 MR. BUTLER: That's not true. 12 That's not true. And I guarantee 13 there will be testimony at trial that 14 there were oral conversations about 15 this, there were meetings, there has 16 been testimony about meetings to 17 discuss this. 18 Q. My question, sir, is didn't you 19 tell me earlier that you are not aware of 20 any oral conversations that occurred 21 surrounding these transactions? 22 MS. DYER: I going to object to 23 form to the extent that you are 24 seeking to suggest that there were. 25 A. As I said in answer to the</p>	<p>174</p> <p>1 LOVE 2 do the right thing, we believe this is 3 revenue so we're trying to do the right 4 thing. I mean, this is absolutely 5 contrary to what the written record shows. 6 Q. Sir, are you going to launch 7 into a speech about fraud and how you 8 interpret the entire record in this case 9 in response to every question that I ask 10 you today? 11 MS. DYER: Mr. Butler, hold on. 12 Don't answer that question. 13 Mr. Butler, that question is not 14 appropriate. You don't like the 15 answers, you've sought to suggest in 16 your last question that there are 17 untestified to oral conversations 18 which occurred, despite there being 30 19 depositions of your -- of your own 20 witnesses that are somehow going to 21 exculpate your client. 22 I think it's inappropriate and a 23 terribly inappropriate suggestion and 24 would also be tantamount to perjury on 25 the part of those witnesses who</p>
<p>175</p> <p>1 LOVE 2 question the first time you answered 3 [sic], there's documentary evidence that 4 they were aware of what they were doing, 5 the evidence is there that they were aware 6 of what they were doing and that it was 7 specifically designed to conceal the 8 related party activity. 9 If they know that if you follow 10 the standards you can't have a related 11 party in then they can't have revenue, and 12 then you conceal the fact that they're 13 related to it from everyone else involved 14 in this, what's -- you know, we got sworn 15 testimony and we got documentary evidence, 16 the record shows that they knew exactly 17 what L&H was doing and why they were doing 18 it and they assisted them, assisted them 19 into doing it. 20 You know if someone says hey, 21 this is okay, it's okay to cheat like 22 this, it's okay, give me a break, it's 23 okay, they'll accept it because, hey, 24 we're pushing this stuff off to the side, 25 no one sees it, who cares, we're trying to</p>	<p>177</p> <p>1 LOVE 2 declined to testify to those 3 conversations. 4 So please do not suggest that 5 the witness is in any way acting 6 inappropriately when you are 7 suggesting that there is some 8 exculpatory oral conversation which 9 Dexia has failed to disclose in the 10 many depositions and somehow didn't 11 manage to get into the documents here, 12 of which there are many. 13 CONTINUED EXAMINATION BY MR. BUTLER: 14 Q. Sir, I didn't ask you about 15 exculpatory conversations. I asked you 16 about a simple conversation about whether 17 you were aware of oral conversations, and 18 you launched into a big speech about fraud 19 and all the conclusions that you have 20 drawn from looking at the evidence that 21 you have seen in that case, and my 22 question is -- 23 MS. DYER: Including the oral 24 conversations, because he said in 25 testimony --</p>

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<p>1 LOVE</p> <p>2 Q. My question is are you going to</p> <p>3 do that every time I ask you a question</p> <p>4 today.</p> <p>5 MS. DYER: Objection to form</p> <p>6 and you do not need to answer that,</p> <p>7 Mr. Love.</p> <p>8 Q. Is that your plan for today, to</p> <p>9 always just talk about how the big fraud</p> <p>10 occurred at L&H and that Dexia was</p> <p>11 involved in response to all of my</p> <p>12 questions?</p> <p>13 MS. DYER: He is answering your</p> <p>14 questions responsibly, you don't like</p> <p>15 the answer, because there was fraud</p> <p>16 here, Mr. Butler.</p> <p>17 Q. Do you understand my question,</p> <p>18 sir?</p> <p>19 A. Yes.</p> <p>20 Q. Can you answer it?</p> <p>21 MS. DYER: Don't answer it.</p> <p>22 We'll take a break, you can take it to</p> <p>23 the Court if you want. I'm</p> <p>24 instructing him not to answer. It's</p> <p>25 an inappropriate question and the</p>		<p>1 LOVE</p> <p>2 A F T E R N O O N S E S S I O N</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Back on the</p> <p>5 record. The time is 2:12.</p> <p>6 CONTINUED EXAMINATION BY MR. BUTLER:</p> <p>7 Q. Mr. Love, we've been talking</p> <p>8 about Love Exhibit 6 which is this fax</p> <p>9 from L&H to Patrick Faict.</p> <p>10 MS. DYER: We're using Exhibit</p> <p>11 6, I'm sorry?</p> <p>12 MR. BUTLER: That's right.</p> <p>13 Q. Sir, do you know what Mr. Faict</p> <p>14 did with this fax when he received it?</p> <p>15 A. Undoubtedly he filed it, because</p> <p>16 it was in the bank's files, but what he</p> <p>17 personally did with it I wouldn't know.</p> <p>18 Q. Did he read it?</p> <p>19 A. I wouldn't know. I think though</p> <p>20 if you look at the record you'll see that</p> <p>21 the issues that are involved here and</p> <p>22 related parties and R&D were all taken</p> <p>23 into consideration and I believe some of</p> <p>24 those lending files have his name on them</p> <p>25 as well.</p>	
<p>1 LOVE</p> <p>2 Court will make that clear. It is</p> <p>3 time for lunch.</p> <p>4 MR. BUTLER: I want the record</p> <p>5 to be clear that you are instructing</p> <p>6 the witness not to answer the</p> <p>7 question.</p> <p>8 MS. DYER: It's crystal clear.</p> <p>9 I am instructing the witness not to</p> <p>10 answer your harassing, inappropriate,</p> <p>11 immature question.</p> <p>12 MR. BUTLER: The Court will make</p> <p>13 its own judgment as to whether it's a</p> <p>14 mature question.</p> <p>15 MS. DYER: It certainly will.</p> <p>16 MR. BUTLER: But we can go off</p> <p>17 the record.</p> <p>18 THE VIDEOGRAPHER: We're going</p> <p>19 off the record. The time is 1:12.</p> <p>20 This is the end of tape three.</p> <p>21 [Whereupon, after a luncheon</p> <p>22 recess was taken, the following was</p> <p>23 had:]</p> <p>24</p> <p>25</p>	179		181

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<p>1 LOVE 2 Q. Do you know whether Mr. Faict 3 sent this document to anyone else within 4 Paribas? 5 A. No. 6 Q. Do you know whether he sent it 7 to anyone at Bacob? 8 A. Bacob? 9 Q. Bacob Bank. 10 MS. DYER: Same objection. 11 A. Do I know if he did, no. It 12 just shows up in the records of the bank 13 and is reflected in the credit files. 14 Q. Do you know whose files this 15 document came from? 16 A. No. 17 Q. Do you know whether Mr. Faict 18 discussed this document with anyone? 19 A. I'm trying to think. There were 20 a lot of documents that relate to the 21 loans and the application of these 22 standards, and his name pops up frequently 23 along with other people's names. 24 In order to give the proper 25 answer I would have to look at all those</p>	<p>182</p> <p>1 LOVE 2 about. 3 Q. I thought I heard your answer 4 to my question about whether Mr. Faict 5 understood the accounting principles in 6 this fax was that you've seen other 7 documents that would suggest that he did 8 understand; was that your testimony? 9 A. That he applied them. I don't 10 know whether I said -- 11 Q. My question, sir, is did he 12 understand it. 13 MS. DYER: Are you finished, 14 Mr. Love? Go ahead and finish your 15 answer. 16 A. Well, I don't know the documents 17 reflect the fact that it was applied and 18 it was taken into consideration in the 19 application of the lending process dealing 20 with the loans that went to the LDC, and 21 it was understood to the extent that the 22 related parties guarantee was put in a 23 side agreement and stated in the records 24 in those loan files because they wanted to 25 take it as revenue and they couldn't take</p>
<p>183</p> <p>1 LOVE 2 files, but as I sit here today I don't 3 know if he spoke to anyone about it. 4 Q. Do you know whether Mr. Faict 5 understood the accounting principles that 6 are set forth in this document? 7 MS. DYER: Objection to form. 8 A. From the records that I looked 9 at, he understood the application of it as 10 it related to Lernout & Hauspie and the 11 lending that the bank was making to the 12 LDCs. 13 Q. Which records are you referring 14 to? 15 A. These are the bank credit files. 16 Q. But are you referring to some 17 specific document that informs you of 18 whether Mr. Faict understood this 19 particular -- the accounting principles 20 that are in this particular fax? 21 MS. DYER: Objection to form. 22 A. I don't understand the question, 23 a document that informs me. A document 24 written to me informing me of that? I 25 don't understand what you're talking</p>	<p>185</p> <p>1 LOVE 2 it as revenue, essentially, I'm not 3 saying -- these are not the exact words, 4 if -- if indeed it was known that these 5 were related party loans being made to 6 L&H. 7 Q. My question, sir, once again, 8 is do you know whether Mr. Faict 9 understood the accounting principles that 10 are in this document? 11 MS. DYER: Objection to form. 12 A. I think my question -- my answer 13 to your question a number of times stands. 14 The application of it is in -- 15 the understanding, if you read the credit 16 files, there is definitely an under- 17 standing of a related party nature of 18 engagements and the fact that the 19 principals in L&H could not be connected 20 with the loan otherwise they couldn't take 21 into revenue the amount of money that they 22 received that was funded by that loan. 23 Q. This is where we were before and 24 so I'll ask you the same question again. 25 Is it your testimony, sir, that you are</p>

<p>1 LOVE 2 aware of documents in the credit files 3 that indicate that Mr. Faict understood 4 the accounting principles that are set 5 forth in this document?</p> <p>6 MS. DYER: Objection to form. 7 Asked and answered as well.</p> <p>8 A. I have answered it before and 9 he's applied it. Whether or not he knew 10 it or not, I didn't test him, there was no 11 test in the credit files of his accounting 12 knowledge, but the principles that are 13 outlined in here were followed by them in 14 structuring the lending relationship with 15 L&H as it related to the LDCs.</p> <p>16 Q. When you refer to documents in 17 the credit files, which specific documents 18 are you referring to or do you have in 19 mind when you give that response?</p> <p>20 A. Let me see what I have here in 21 my file, if I can do that.</p> <p>22 There are a number of documents 23 that we've referenced where we talk about 24 the credit files and what the credit files 25 say. Specific document. Let me get the</p>	186	<p>1 LOVE 2 excerpt from an internal bank memo from 3 Bernard Mommens, M-O-M-M-E-N-S, the Bank's 4 lead in-house legal counsel, Mr. Mommens, 5 in, quote, to Mr. Faict dated May 14, 6 1997, indicates that the bank was well 7 aware that the DC transactions lacked 8 economic substance, and this is a quote 9 from that "As yet, I would like to mention 10 that I do not understand why the financing 11 has to go by Dictation Consortium NV that 12 received the license from L&HSP for 13 technology with the right to further 14 develop it. DC then contracts out to 15 L&HSP that also receives a 16 commercialization order from DC. As 17 compensation for receiving mentioned 18 license DC must pay a 'consent fee' (i.e. 19 150 Mio BEF) to L&HSP, and the last 20 mentioned has right to 50% of the net 21 sales revenue. In addition, DC must pay a 22 compensation to L&HSP in the case of every 23 immediate delivery that together adds up 24 to 750 Mio BEF.</p> <p>25 "While reading the draft of the</p>	188
<p>1 LOVE 2 first one as we go through here.</p> <p>3 On page 32, DBB 007190, A fax 4 from Mr. Faict to the Flemish Government, 5 dated December 13, 1996, stated: Upon 6 request of Mr. Paul Hauspie you'll hereby 7 find enclosed the advice of an American 8 law firm in respect of the requirements 9 that need to be imposed upon the framework 10 of the U.S. GAAP -- within the framework 11 of the U.S. GAAP regulations so that the 12 fees paid to Lernout & Hauspie Speech 13 Products N.V. by Dictation Consortium N.V. 14 in this operation will have the character 15 of R&D fees.</p> <p>16 Q. Do you interpret that document, 17 sir, to indicate that Mr. Faict understood 18 that --</p> <p>19 A. I'm sorry, I haven't finished 20 your other -- first question, if you can 21 wait, let my finish your question then 22 I'll go on to the second one. I'm still 23 looking through here.</p> <p>24 Q. Fair enough.</p> <p>25 A. On page 33, the following</p>	187	<p>1 LOVE 2 'Memorandum of the Flemish Government' 3 written by [and this I'll never get right] 4 Loeff, Claeys & Verbeke, the artificial 5 character of the structure emerges.</p> <p>6 "It has to be mentioned that 7 memorandum was presented to us as legal 8 opinion including with regards to 9 securities. However, the memorandum does 10 not comply with this. That is why the 11 impression raises that L&HSP and the law 12 firm want to pass the risks of contracts 13 analysis and the securities be taken to 14 Paribas. Do we accept this.</p> <p>15 Then point number 5: Based on 16 the documents we have received we have to 17 determine that DC is an empty company 18 without customers, without contracts, 19 without -- I'm sorry -- without contracts, 20 without customers and even without any 21 commercial activity. No company exists, 22 for this reason it is not possible to take 23 a warranty of the company.</p> <p>24 Q. I don't mean to interrupt, but I 25 think you misread that portion. Perhaps</p>	189

<p style="text-align: right;">190</p> <p>1 LOVE 2 you should read it again. It doesn't say 3 anything about contracts. 4 A. Without contact with customers. 5 I'm sorry. 6 Q. Correct. 7 A. That would be, thank you 8 counsel. 9 And it goes further on there, 10 and this is on page 34 now, and this is 11 the legal department to Mr. Faict: "While 12 reading the file we are slightly surprised 13 about the fact that Dictation [and they 14 spell dictation all upper case] applies 15 for this kind of credit with so few assets 16 and objectives. We do not understand the 17 economic goal that the parties strive to 18 accomplish by means of these actions. To 19 us it seems that only Lernout & Hauspie is 20 developing and commercializing the 21 software. A valid security would be a 22 pledge of the receivables of Dictation 23 towards Lernout & Hauspie. However, as 24 Dictation appears to be a 100% branch of 25 Lernout & Hauspie, in the event of</p>	<p style="text-align: right;">192</p> <p>1 LOVE 2 not be considered a financing operation 3 in the event the transaction would be 4 qualified for a financing operation. The 5 U.S. 25 million would not qualify as 6 income for L&H."</p> <p>7 On page 37: In an August 5, 1996 8 memo to the Bank's Management Committee, 9 Mr. Faict stated in section 4.1: [And 10 this is the statement] "L&HSP N.V. 11 [periods after the N and the V] who will 12 develop the 'Speech-to-Text Dictation' 13 software, intends to incorporate Dictation 14 Consortium N.V. to commercialize the 15 software.</p> <p>16 In connection herewith L&HSP 17 found a number of private investors, the 18 families involved in the startup of -- I'm 19 sorry there was a paren before the 20 families, the families involved in the 21 start-up of L&HSP willing to participate 22 in the dictation initiative and to bring 23 in a capital of 45 million -- 450 million 24 (that is 50% of the total amount of 90 25 [sic] million to be received [sic]. For</p>
<p style="text-align: right;">191</p> <p>1 LOVE 2 financial difficulties [and there is 3 parens around financial] at one or the 4 other, the value of such pledge will be 5 random. By means of such pledge we do, 6 however, obtain a certain level of control 7 on the activity. 8 On page 35 at the top it starts 9 "Mr. Faict paraphrased the BRF&G November 10 1996 letter and stated: This file will be 11 presented again as: Political games 12 squeeze [all upper case, new paragraph]. 13 "It is important to L&H that the 14 fees for the development of Dictation 15 software may, under the American 16 accounting principles (U.S. GAAP), be 17 characterized as R&D fees and consequently 18 may be booked as income. To have the fees 19 for the development acknowledged as income 20 for L&H, the payments need to be 21 non-repayable. 22 "The transaction needs to have 23 the characteristics of the development 24 agreement between independent companies, 25 (arm's length principle), so that it would</p>	<p style="text-align: right;">193</p> <p>1 LOVE 2 the remaining 50% of the amount to be 3 financed, the Flemish Government and banks 4 are approached with the objective of 5 finding formulas to obtain the other 450 6 million -- and there's a -- on this thing 7 here there's the square brackets B-E-F. 8 Now, those were specific to 9 Mr. Faict and there are some more but 10 there are also other banking documents 11 that I was talking about. 12 On page 38: The bank also 13 recognized that related party 14 relationships and the -- that related 15 party relationships in an internal bank 16 memorandum as follows: FLV was under the 17 impulse of Mr. Lernout and Mr. Hauspie 18 incorporated on December 22, 1995 for the 19 purpose of providing risk capital to 20 starting and growing companies within the 21 sector of language and speech technology 22 as well as promoting the establishment of 23 these companies in the Ieper, square open 24 bracket, Belgium, square close bracket 25 region.</p>

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<p>1 LOVE</p> <p>2 Page 41: Mr. De Coen's,</p> <p>3 C-O-E-N-S, C-O-E-N-'S testimony:</p> <p>4 Typically are guarantees referenced in</p> <p>5 credit agreements? Yes. Apart from the</p> <p>6 Dictation Consortium where you were</p> <p>7 involved in any loan was a guarantee</p> <p>8 requested that would be excluded from the</p> <p>9 credit agreement? I don't recall.</p> <p>10 There are other bankers of, a</p> <p>11 Mr. Van Helleputte, H-E-L-E-P-U-T-T-E,</p> <p>12 Credit Analyst: Question: Have you ever</p> <p>13 used a side letter guarantee? That is a</p> <p>14 difficult question. Not that I can</p> <p>15 immediately recall.</p> <p>16 On page 49, I'll give you the</p> <p>17 reference, it's reference to Footnote 104,</p> <p>18 which is DBB 038286. We can state that</p> <p>19 this credit is being used to finance</p> <p>20 Machine Translation project within L&H.</p> <p>21 On account of reasons intrinsic to NASDAQ,</p> <p>22 N-A-S-D-A-Q/E-A-S-D-A-Q listing of L&H,</p> <p>23 the financing of the entire project was</p> <p>24 classified into Special Purpose Vehicle</p> <p>25 Brussels Translation Group NV. As a</p>		<p>1 LOVE</p> <p>2 quote but really comes from it's a</p> <p>3 follow-up internal bank memo from J.</p> <p>4 Van Helleputte, Credit Analyst, the</p> <p>5 independence of L&H is -- that's item 2.1</p> <p>6 in that memo.</p> <p>7 Okay, on page 50: In an</p> <p>8 internal bank memorandum, item 3 entitled</p> <p>9 "U.S. GAAP Restrict the Possible</p> <p>10 Structurings of the Operation" it stated:</p> <p>11 The operation has two benefits of L&H, the</p> <p>12 loan for the financing of the development</p> <p>13 cost is granted to a third party, that BT</p> <p>14 -- that is BTG, and will consequently not</p> <p>15 affect the balance sheet of L&H.</p> <p>16 The compensation for development</p> <p>17 costs, which BTG will pay to L&H, will</p> <p>18 constitute company income to L&H.</p> <p>19 To realize this benefit it is</p> <p>20 essential under U.S. GAAP that the</p> <p>21 transaction between BTG and L&H be</p> <p>22 considered as a mere commercial</p> <p>23 transaction taking place between</p> <p>24 independent and free parties under normal</p> <p>25 economic circumstances.</p>	
<p>1 LOVE</p> <p>2 result that translation can be viewed</p> <p>3 merely as a commercial transaction and can</p> <p>4 -- and came about between independent and</p> <p>5 unassociated parties under normal economic</p> <p>6 circumstances, such as this transaction</p> <p>7 certainly should be -- not be classified</p> <p>8 as a loan under U.S. GAAP. In view of the</p> <p>9 public nature of NV L&H, the U.S. GAAP</p> <p>10 rule must be implemented in a very</p> <p>11 stringent manner and the SEC will monitor</p> <p>12 this very closely.</p> <p>13 For this it is appropriate that</p> <p>14 L&H stay out of the loan transaction</p> <p>15 completely so that it can post, closed</p> <p>16 bracket -- square bracket -- open bracket</p> <p>17 record, square close bracket, the funds</p> <p>18 needed for this project as revenues as</p> <p>19 well. According to the prevailing rules</p> <p>20 in terms of stock exchange authorities,</p> <p>21 the transaction must be -- must meet the</p> <p>22 following characteristics, and there's a</p> <p>23 bracket Cf. Letter from KPMG as part of</p> <p>24 the Dictation project).</p> <p>25 This, you know, I gave you that</p>	195		197

50 (Pages 194 to 197)

<p>1 LOVE 2 under the caption -- I'm reading what we 3 put in there -- Impossibility of having 4 the entirety of our risks covered by L&H 5 under U.S. GAAP. 6 On account of reasons intrinsic 7 to the NASDAQ/EASDAC listing of L&H, the 8 financing of the entire project was 9 classified into the special purpose 10 vehicle Brussels Translation Group NV. 11 As a result that transaction must be able 12 to be viewed merely as a commercial 13 transaction that came about between 14 independent and unassociated parties under 15 normal economic circumstances, such as 16 this transaction certainly shall not be 17 reclassifiable as a loan under U.S. GAPP. 18 With reference to Footnote 113, which is 19 113 is DBB 038286. 20 Page 54 of the report, from the 21 deposition of Mr. Janssens, reference to 22 Footnote 124, transcription page 107, 23 lines 19 to 25, page 108, lines 1 to 10. 24 And is it also true that the 25 Brussels Translation Group transaction was</p>	<p>198</p> <p>1 LOVE 2 reference to the identity of the private 3 individuals as in that case a link will be 4 made between the debtor and those private 5 individuals. With regards to the outer 6 world it is not desirable for the client 7 that a direct link be made. 8 This issue clearly surpasses the 9 fiscal asset, whereby I mean that the 10 private individuals who concluded the CDS 11 possess sufficient financial means or 12 could possess sufficient financial means 13 which would justify the commitment entered 14 into on the basis of their fiscal known 15 capital or potential. 16 A later bank memo states that 17 the funds being disbursed -- 18 Q. Sir, what page are you on? 19 A. I'm sorry, I'm sorry, page 84 20 I'm starting at the bottom and it's just 21 an "a" at the bottom. A later bank memo 22 states that the funds being disbursed to 23 Messrs. Lernout, Hauspie and Willaert 24 would be loaned immediately to LDF. 25 There is a reference to</p>
<p>199</p> <p>1 LOVE 2 similar, that the Brussels Translation 3 Group act -- Translations Group 4 transaction was similar to the Dictation 5 transaction in that there were limitations 6 placed on Lernout & Hauspie's role in any 7 financing so that Lernout & Hauspie could 8 recognize revenue on its dealing with 9 Brussels Translation Group? Yes, that is 10 why, that's right, there was a similarity. 11 Is it true that the bank was 12 informed that Lernout & Hauspie could not 13 be liable directly or indirectly, or by 14 means of a guarantee with respect to the 15 repayment of the financing of the BTG 16 loan? Answer: Yes, that is correct. 17 Page 62, going over to 63, the 18 reference is to DBB 003726. We 19 consequently request to only make 20 reference in the letter to a reference 21 number of the C-D-S, capital C, capital D, 22 capital S, transaction and not to make 23 reference to the identity of the private 24 individuals. Motivation hereto is that 25 the client does not agree to make</p>	<p>201</p> <p>1 LOVE 2 DBB003647. 3 The memo state -- further 4 stated: After completion of the R&D 5 stage, these special purpose companies 6 will be repurchased by LHS who will then 7 commercialize the languages (only a moral 8 commitment.) To -- that's reference to 9 202, which is the same reference. 10 LDF, as umbrella holding, is 11 already 100% shareholder of three Language 12 Development Companies. 13 That's just speaking about -- so 14 what I'm going to do, Mr. Butler, is go 15 down to the bottom of that and start off 16 with the paragraph that says, The 17 borrower, close bracket, Messrs. Lernout 18 and Hauspie and Willaert, close square 19 bracket, close bracket, leads these 20 funds -- lends these funds to LDF, which 21 in turn grants a loan to the new LDC who 22 buys the licenses with it. 23 As LHS's books the license fee 24 -- the license sale as turnover, and 25 there's a bracket, revenue, closed</p>

	202		204
1 LOVE 2 brackets, is essential under the U.S. 3 GAAP, that there is complete independence 4 between LDF and LHS, consequently LHS 5 itself cannot be in any way a party to -- 6 implied in an agreement concerning 7 repayment of the requested financing.		1 LOVE 2 specific question, which documents 3 indicate to you that Mr. Faict personally 4 understood these accounting principles, 5 are they the ones that you quoted that he 6 was either the author of or the recipient 7 of?	
8 THE VIDEOGRAPHER: We're going 9 to run out of tape.		8 A. I don't think you used 9 personally in your answer [sic], I think 10 you just said Mr. Faict, but that's 11 neither here nor there.	
10 MR. BUTLER: We need to take a 11 quick break to change the tape, but 12 you can continue your answer when we 13 finish.		12 You want to know now, as I 13 understand it, there are references in 14 the manual, in my report, to those that 15 were either memos that were either sent 16 or received by Mr. Faict. I don't know 17 if he is on -- I don't have the documents 18 with me here -- he may have been a 19 recipient of the others as well, but there 20 are other bank documents.	
14 THE VIDEOGRAPHER: Going off the 15 record. The time is 3:01. This is 16 the end of tape three. 17 (Discussion held off the 18 record.)		21 I don't know right now as I sit 22 here, without looking at the documents 23 I've quoted from throughout the report, 24 if he's one of the people who is -- has 25 been copied on them or not.	
19 THE VIDEOGRAPHER: We're back on 20 the record. The time is 3:06. This 21 is the beginning of tape four.			
22 A. That's the ones that I've 23 noticed, going through that as quickly as 24 I could, but there may be others in there, 25 references that I haven't picked out			
1 LOVE 2 exactly.	203	1 LOVE 2 Q. Do you know whether Mr. Faict 3 had any training in U.S. GAAP?	205
3 Q. Mr. Love, you identified in 4 response to my question, by my count, 15 5 excerpts from documents that are quoted 6 in your report.		4 MS. DYER: Objection to form.	
7 Is it your testimony, sir, that 8 each of those excerpts that you quoted 9 indicates to you that Mr. Faict understood 10 the accounting principles that are set 11 forth in Love Exhibit 6?		5 A. I don't know what you would 6 call "training," if you receive a letter 7 that tells you what U.S. GAAP is, if that 8 is considered training. Are you talking 9 about a formal education?	
12 A. I said I told you the ones -- 13 going through my answer, I gave you 14 correspondence that, in fact, Mr. Faict 15 is either the author or the receiver, 16 and I said when I was in there that the 17 others showed that the bank -- the bankers 18 got theirs also, as Mr. Faict has it -- 19 I assume that Mr. Faict is a bank 20 officer -- and there's also an under- 21 standing throughout that the bank is 22 aware of the provisions and what the 23 provisions mean in regard to the recording 24 of revenue.		10 Q. Well, let's break it down. 11 Has he had any, to the best of 12 your knowledge, has Mr. Faict had any 13 formal education in U.S. GAAP?	
25 Q. Okay, but in answer to my		14 A. I don't know. 15 MS. DYER: Objection to form.	
		16 Q. Has Mr. Faict attended any 17 seminars or presentations by CPAs on U.S. 18 GAAP?	
		19 A. Versus attending them by 20 non-U.S. CPA? I have no knowledge of 21 whether or not he attended them.	
		22 Q. You have no knowledge either 23 way, it doesn't matter whether they are 24 CPAs teaching the class.	
		25 A. Either way, yes, Mr. Butler.	

52 (Pages 202 to 205)

<p>1 LOVE 2 Q. Do you have any knowledge that 3 Mr. Faict received any information about 4 U.S. GAAP, apart from the information 5 that's contained in Love Exhibit 6? 6 MS. DYER: Objection to form. 7 A. I'd have to look at the 8 documents again, because he was involved 9 in the lending relationship and there are 10 -- there are comments in those documents 11 that may reflect on your question. 12 Q. Have you ever met Mr. Faict? 13 A. No. 14 Q. Is it fair to say that your 15 only knowledge of his understanding of 16 U.S. GAAP comes from the documents that 17 you've reviewed in this case? 18 MS. DYER: Objection to form. 19 A. Well, first of all, you are 20 talking about U.S. GAAP and it's not U.S. 21 GAAP that he's got to know, okay? It's 22 very specific, two pieces of it that we 23 have here that he's been given. 24 He's been given the related 25 party correspondence or standards, the</p>	<p>206</p> <p>1 LOVE 2 Q. What is it in this language 3 that makes you believe that Mr. Faict 4 understood the principles? 5 A. Well, he's making a 6 representation in a fax to the Flemish 7 Government that -- that upon request of 8 Mr. Paul Hauspie you'll hereby find 9 enclosed the advice of American law firm 10 in respect of the requirements that need 11 to be imposed upon the framework of the 12 U.S. GAAP regulations so that the fees 13 paid to Lernout & Hauspie Speech Products 14 N.V. by Dictation Consortium in this 15 operation will have the character of R&D 16 fees; and I believe what he is referring 17 to is the BRF&G letter, and BRF&G. 18 Is the U.S. law firm, so he has 19 that letter besides then or he's -- I 20 don't understand his representation to the 21 Flemish Government, and all of those 22 point-by-point say what you need to do, 23 and it's very simple. 24 Q. Sir, isn't he just transmitting 25 some advice from an American law firm</p>
<p>1 LOVE 2 current text, and the current text for 3 software development. So it's not U.S. 4 GAAP. It's two specific elements of U.S. 5 GAAP. 6 Q. Well, let me rephrase my 7 question then. 8 Is it your understanding -- 9 strike that. 10 Is it fair to say that the only 11 understanding that you have of whether 12 Mr. Faict understood the accounting 13 principles that are set forth in Love 14 Exhibit 6 comes from the documents that 15 you've reviewed in this case? 16 A. Yes. 17 Q. So let's just walk through the 18 documents that you referred me to. The 19 first is on page 32. You say -- you said, 20 I believe that, and you quoted the 21 language that's excerpted at the top of 22 the page as evidence that Mr. Faict 23 understood these principals; is that 24 correct? 25 A. Yes.</p>	<p>207</p> <p>1 LOVE 2 here? 3 MS. DYER: Objection to form. 4 A. He is sending a fax to the 5 Flemish Government making a representation 6 to the Government that this has been 7 received from an American law firm in 8 respect to U.S. GAAP regulations. So he 9 knows that those GAAP regulations are 10 required so that if the fees are going to 11 be paid to Lernout & Hauspie by Dictation 12 Consortium and its operations they will 13 have the character of R&D fees. 14 Q. When he said advice of an 15 American law firm, what did you understand 16 him to mean? 17 A. That he was transmitting the 18 letter from the American law firm that he 19 then states in respect of the requirement 20 that requirements need to be imposed upon 21 the framework of U.S. GAAP regulations so 22 that the fees paid to Lernout & Hauspie -- 23 that's his words, that doesn't come out 24 of the law firm's words -- Speech Products 25 N.V. by Dictation Consortium N.V. in this</p>

53 (Pages 206 to 209)

<p>1 LOVE 2 operation will have the character of R&D. 3 So he's got to understand that 4 those requirements have that impact and 5 he understands that there's an impact on 6 the fees and whether they can be 7 recognized as R&D fees or not based upon 8 the requirements set out in the law firm's 9 letter. 10 Q. Isn't it possible, sir, that 11 Mr. Faict forwarded this advice from an 12 American law firm to the Flemish 13 Government without having a full 14 understanding of the U.S. GAAP that is 15 reflected in Love Exhibit 6? 16 MS. DYER: Objection to form. 17 A. Love Exhibit 6? 18 Q. Do you have Love Exhibit 6 in 19 front of you? This is the document I've 20 been asking about. 21 A. Okay, but this -- this does 22 not -- counselor, this does not state -- 23 this has nothing to do with that statement 24 that's being made here by -- in the fax 25 from Mr. Faict to the Flemish Government.</p>	<p>210</p> <p>1 LOVE 2 has Love Exhibit 6, that's the GAAP for 3 related parties and R&D, he has another 4 item in his hand, it's a letter from a law 5 firm that he's representing to the Flemish 6 Government includes the framework or the 7 requirements imposed within the framework 8 of U.S. GAAP. He certainly must know if 9 he's gonna write in there that it has to 10 do with whether or not in essence, in 11 other words, the fees to Lernout & Hauspie 12 by Dictation will have the character of 13 R&D fees and be taken into revenue. 14 Excuse me. So that, that is an extended 15 knowledge of this (indicating). 16 Now, we got this gentleman in 17 two places having knowledge of 18 requirements that he's also representing 19 to the Flemish Government are the 20 requirements in order to be able to 21 recognize revenue. 22 Q. Since we're now clear on the 23 documents I just want to ask you again, 24 because I'm not sure I got a clear answer 25 to this.</p>
<p>1 LOVE 2 He's not saying I am 3 transmitting to you the current text for 4 related parties and the current text for 5 research and development arrangements; 6 he's saying I'm sending to you another 7 document that he then has in his 8 possession and he's saying that that 9 shows the U.S. GAAP regulations or the 10 fees paid to Lernout & Hauspie Speech 11 Products N.V. by Dictation Consortium 12 N.V. in this operation will have the 13 character of the R&D fees. He's not 14 sending Love 6, Exhibit Love 6. 15 Q. Oh, I understand that, sir, and 16 so my question is why do you believe that 17 the fact that he forwarded this different 18 document and makes a reference to 19 character of R&D fees in this document, 20 why do you believe that that indicates 21 that Mr. Faict understood the accounting 22 principles that are set forth in Love 23 Exhibit 6 which is the thing I've been 24 asking you about all along? 25 A. Let me just say it again. He</p>	<p>211</p> <p>1 LOVE 2 So isn't it possible that Mr. 3 Faict could have forwarded this advice 4 from an American law firm to the Flemish 5 Government without having an understanding 6 or certainly without a good understanding 7 of the accounting principles that are set 8 forth in Love Exhibit 6? 9 MS. DYER: Objection to form. 10 Objection asked and answered. 11 A. Let me just say and say it 12 again. I think what you're saying, or 13 maybe what you're saying, is this man gets 14 a fax from the company that includes U.S. 15 GAAP in English with no translation into 16 Flemish that he may not understand because 17 he may not speak Flemish or may not have 18 any training, and then he gets a letter 19 from a U.S. law firm that's in English 20 that talks about U.S. GAAP requirements 21 and breaks it down for him and then he 22 also can understand or at least shows that 23 he understands that this affects the 24 recognition of fees as revenue and what, 25 why I believe that is is evidence of the</p>

<p>1 LOVE 2 fact that he understood it. 3 I think the bank's got a lot of 4 serious problems they got their people 5 making comments based upon documents that 6 they don't understand and can't read, 7 especially to the Flemish Government, and 8 documenting -- I don't know what the 9 Belgium bank laws are for documentation of 10 loan files, but documentation and loan 11 files in the U.S. if they're falsified is 12 a criminal offense, in my understanding as 13 a lay person.</p> <p>14 So we've got now two documents, 15 both in English, both dealing with the 16 same subject and with Mr. Faict saying 17 that this is what -- he's representing to 18 them this is what U.S. GAAP is in order to 19 take these fees as having the 20 characteristics of R&D fees.</p> <p>21 Q. Let me ask you this: The 22 American law firm that's referenced here, 23 who did they represent in this 24 transaction?</p> <p>25 A. Lernout & Hauspie.</p>	<p>214</p> <p>1 LOVE 2 U.S. GAAP requirements, and if you were 3 required for one reason or another to send 4 it to them it is also, he's never 5 mentioned that, you know, and because of 6 this we've helped them and we structure 7 this so they wouldn't be seen as part of 8 the deal and we know they're part of the 9 deal because we know they guarantee the 10 loan but we got that in a side agreement 11 so that this is going to look like it's a 12 regular R&D deal.</p> <p>13 Q. Just in general, based on your 14 experience as a fraud examiner and an 15 expert on -- on the investigation of 16 fraud, in your experience do people who 17 are involved in a fraud provide 18 information about that fraud to government 19 authorities?</p> <p>20 MS. DYER: Objection to form.</p> <p>21 A. I can say quite clearly, Mr. 22 Butler, this has nothing to do with 23 information on the fraud, okay? It is a 24 fraud to say though -- there's a fraud on 25 omission and if he says that these are the</p>
<p>1 LOVE 2 Q. And why was Mr. Faict 3 communicating this information about U.S. 4 GAAP to the Flemish Government? 5 A. Because -- 6 MS. DYER: Objection to form. 7 A. He wasn't -- 8 THE WITNESS: Could I have that 9 read back? 10 [The requested portion of the 11 record was read.] 12 A. I'd have to read the whole fax 13 to see why. However, as I understood it, 14 there could have been someone -- they 15 could have been attempting to get -- I 16 don't know, I don't know why he would be 17 saying that to the Flemish Government. 18 Q. In fact if Mr. Faict was 19 involved in a fraud wouldn't you think 20 that he would not want to inform the 21 Flemish Government about it? 22 MS. DYER: Objection to form. 23 A. At this point in time he hasn't 24 informed the Flemish Government about 25 anything either way, except U.S. GAAP and</p>	<p>215</p> <p>1 LOVE 2 rules, and, you know, the implication is 3 that they're following the rules, that 4 they got a free-standing company, that 5 there is -- that the loan, the financing 6 is not based on the creditworthiness of 7 Lernout and Hauspie Willaert and Bastiens, 8 then he could be lying for all I know to 9 the Flemish Government so that they could 10 get some sort of funding that they may 11 need.</p> <p>12 Q. Sir, I'll ask you my question 13 again. I'm asking about your general 14 experience, not this specific document.</p> <p>15 A. Yes, the answer -- 16 Q. Sir, let me finish, let me 17 finish my question.</p> <p>18 A. Sorry, I'm sorry.</p> <p>19 Q. In your experience, in your 20 experience as a fraud expert, do you 21 believe that people who have involved or 22 have experienced people being involved 23 in a fraud sending information about their 24 fraud to government authorities?</p> <p>25 MS. DYER: Objection to form.</p>

<p>1 LOVE 2 Objection asked and answered. 3 A. Your question is sending 4 information about fraud. He's not saying 5 there's a fraud going on. He's not saying 6 -- if he wanted to say it right he'd say 7 here's the rules and here's what we're 8 doing, we're hiding the fact that they're 9 involved in this, so that makes it 10 structured so that they can use it because 11 we can hide it. That's information about 12 the fraud. 13 Lying to other people to stop 14 the fraud from being uncovered, certainly 15 I found that, certainly I found 16 communications with people outside of a 17 company that were not telling the truth to 18 conceal the fraud but were about the 19 issues that involved the fraud. That's 20 how you do it. 21 Q. Sir, I'll ask you once again, 22 and I would appreciate an answer to this 23 question. I'm not asking about this 24 particular transaction. 25 In your experience as an </p>	218	<p>1 LOVE 2 fraud. 3 Q. Sir, what information about the 4 Dictation Consortium transaction was 5 withheld from the Flemish Government? 6 A. Regulations so that the fee paid 7 to Lernout & Hauspie Products N.V. by 8 Dictation Consortium in this operation 9 will have the characteristics of R&D fees. 10 He doesn't tell them, okay, that Lernout & 11 Hauspie and Willaert are guarantors on 12 these loans, which makes it a related 13 party financing, which under the R&D 14 standards would preclude you from taking 15 it into income. It's a fraud by omission 16 not by commission. 17 Q. Are you saying that this was the 18 only communication about this transaction 19 with the Flemish Government and therefore 20 because it doesn't include the facts that 21 you referenced then the Flemish Government 22 must have been misinformed; is that your 23 belief? 24 MS. DYER: Objection to form. 25 A. Counselor, if you show me a </p>	220
<p>1 LOVE 2 investigator of fraud, is it generally 3 normal for people who are involved in a 4 fraud to send information about their 5 fraud to government authorities? 6 MS. DYER: Objection. Asked and 7 answered. Objection to the form of 8 the question as well. 9 A. I answered that question. They 10 don't say it's a fraud, they say what's 11 been going on and they keep back the 12 fraudulent part, and that's exactly what 13 happened here. That's what I've seen. 14 I've seen people communicate, 15 say this was good income or this was the 16 way the transaction was structured and 17 hold back on the either oral or written 18 side agreements. It happens quite 19 frequently, you're right, and that's part 20 of the fraud, you don't go out and tell 21 them that it happened, you keep that under 22 covers, under cover. 23 Q. Sir, what information -- 24 A. So you don't tell them about the 25 fraud. He's not telling anyone about a </p>	219	<p>1 LOVE 2 document where he tells the Flemish 3 Government that Lernout and Hauspie, 4 Willaert and Bastiens were the guarantors 5 of this loan I'd gladly accept it and take 6 it into consideration. I've looked 7 through those documents. People working 8 for me looked through those documents, and 9 I haven't seen it. 10 Q. You're speaking specifically of 11 the guarantee, but let's set aside the 12 personal guarantee. I think it comes up 13 in your report of \$4.5 million guarantee 14 at a particular point in time. 15 Are you -- do you know whether 16 the Flemish Government was fully informed 17 of other aspects of the structure of the 18 Dictation Consortium transaction? 19 MS. DYER: Objection to form. 20 A. I don't know if they were 21 informed or not. 22 Q. Is it possible that they were 23 fully informed of the structure and the 24 only thing they did not know about was the 25 side letter guaranteed from Messrs. </p>	221

<p>1 LOVE 2 Lernout and Hauspie Willard and Cloet? 3 MS. DYER: Objection to form. 4 A. That's beautiful, I love the 5 question because what you're saying is the 6 most important component, the one that's 7 in plain, clear English in FAS 68 that 8 would preclude you from taking the fees 9 and revenue what they hid and they have 10 off to the side. The financing, the 11 related party of the enterprise, and the 12 enterprise is L&H, and they were the 13 related party of the enterprise being the 14 basis of the financing, and if you look 15 at the loan files you'll see that they are 16 not lending on any aspects of the 17 construction of DC, they are lending on 18 the strengths of that guarantee that's in 19 a side letter and not told to everyone. 20 That's a beautiful question, it says that 21 they committed fraud by not telling people 22 that one aspect if that actually happened. 23 Q. Sir, I don't care if you love my 24 question or not, I just want an answer to 25 my question.</p>	<p>222</p> <p>1 LOVE 2 Government, they didn't tell them all of 3 the relevant facts for the Flemish 4 Government to make any fair evaluation on 5 what occurred. 6 Q. Is it possible, sir, that the 7 Flemish Government was even informed of 8 the \$4.5 million guarantee? 9 MS. DYER: Objection to form. 10 A. I looked at all of the documents 11 that we have, you know -- we probably 12 didn't look at every one of the hundreds 13 of thousands but we looked at quite a few 14 of them -- we scanned them and we ran 15 searches on them based upon key words, and 16 I haven't found a document that shows me 17 that they knew everything about it. 18 Q. Do you think that you have a 19 complete record of all the documents that 20 were exchanged between Lernout & Hauspie 21 and the Flemish Government? 22 MS. DYER: Again object to form. 23 A. We got the documents that have 24 been produced for discovery in this case, 25 all of the documents, access to all of the</p>
<p>223</p> <p>1 LOVE 2 A. I gave you the answer to the 3 question. 4 Q. My question is, do you -- is it 5 possible that the Flemish Government was 6 fully informed of the structure of this 7 transaction, setting aside the issue after 8 whether they were informed of the personal 9 guarantee, is it possible that they were 10 informed of all aspects of the transaction 11 apart from the \$4.5 million personal 12 guarantee? 13 MS. DYER: Objection to form. 14 Objection asked and answered. 15 Q. Can you answer my question, sir? 16 A. I just answered the question 17 before. I said that that's a great 18 question because what you're asking is 19 that they have informed about anything -- 20 it's possible that they can be informed 21 about anything, anything, even in addition 22 to this, but you're saying leaving out the 23 guarantee and the side letter and not in 24 the documents. I think that that says 25 that they also lied to the Flemish</p>	<p>225</p> <p>1 LOVE 2 documents, any document we wanted that was 3 produced in this case. 4 Q. Well, there were no documents 5 produced by Lernout & Hauspie in this 6 case, right, they are not part of this 7 case? 8 MS. DYER: Objection. Objection 9 to form. 10 Q. My question, sir, is do you 11 think you have a complete record of all 12 the communications that took place between 13 Lernout & Hauspie and the Flemish 14 Government. 15 A. Okay. You just prefaced that 16 with Lernout & Hauspie was not in this 17 case, and if you're excluding all of 18 Lernout & Hauspie's documents, the tens 19 and even the hundred thousand or better 20 documents that we have that are Lernout & 21 Hauspie products, I haven't seen anything 22 from the Flemish Government that I can 23 recall. 24 I just don't understand the 25 question. If you've got a document, let</p>

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<p>1 LOVE 2 me see it. I'll take it into 3 consideration. I'm not here to make a 4 case, I'm here to say what the facts are 5 that will support a conclusion or an 6 opinion one way or the other. Give me the 7 document, Counselor, I'll look at it. I 8 can't address something that I don't have 9 that could be fictitious and made up. 10 Q. I understand, sir, but you've 11 reached some pretty firm conclusions and 12 you've repeated them again and again today 13 based on an incomplete documentation 14 record.</p> <p>15 MR. BUTLER: I'm asking a 16 question here.</p> <p>17 MS. DYER: We have the L&H 18 documents in this case. They have 19 been produced in this case. So to 20 the extent that you are suggesting 21 that he doesn't have access to the L&H 22 documents in connection with this 23 case, that's just a representation I 24 can't let you make.</p> <p>25 We have the L&H documents, they</p>		<p>1 LOVE 2 just as it would normally be in any other 3 case. 4 If you have any additional 5 documents that you think I see -- I should 6 see, I want to see them. I want to see 7 them.</p> <p>8 Q. Did you make an effort in 9 preparing your report and in formulating 10 your opinions, did you make an effort to 11 try to find all the communications between 12 Lernout & Hauspie and the Flemish 13 Government regarding the Dictation 14 Consortium transaction?</p> <p>15 A. We scanned the files with 16 different criteria involved in them, in 17 it. If there's a document, give it to me, 18 I want it, I really want it. I want to be 19 right, that's my whole purpose in being 20 here is to be right.</p> <p>21 If there's something that 22 refutes what I've said in here that shows 23 that there wasn't fraud that was concealed 24 from everybody I want to know about it.</p> <p>25 Q. Sir, my question is did you make</p>	
<p>1 LOVE 2 were produced in the prior litigation, 3 they were then provided to you and 4 your client in this litigation. Mr. 5 Love has them as well. 6 So I don't know what you're 7 asking and perhaps you don't 8 understand what documents have been 9 produced in this case, but the L&H 10 documents are here.</p> <p>11 MR. BUTLER: Are you finished? 12 MS. DYER: Yes. 13 MR. BUTLER: Okay. I'm not 14 going to argue with you on the record. 15 I just want an answer to my question. 16 MS. DYER: How could you -- 17 Q. Do you have any way of knowing 18 whether your opinions are based on a 19 complete documentary record or merely a 20 partial and fragmented documentary record? 21 MS. DYER: Object to form. 22 A. My opinions are based upon the 23 documents that we have stated that we've 24 looked at in this particular case, 25 including the Lernout & Hauspie documents,</p>	227		229

<p>1 LOVE 2 would be exculpatory in this sense. 3 Q. Do you know whether the -- 4 you've put in your report your opinion 5 that the Dictation Consortium transaction 6 had no economic substance. 7 Do you know if the -- the 8 Flemish Government was informed of the 9 same information that led you to conclude 10 that there was no economic substance to 11 this transaction? 12 MS. DYER: Objection to form. 13 A. I think in the Flemish 14 Prosecutor's report, and I assume the 15 Prosecutor is part of the Government, they 16 said they have no economic substance. I 17 believe they said that. 18 As I sit here today, I'd have to 19 go back and look at the report. I have 20 visions of looking at different things, 21 they talked about it. 22 Q. My question is at the time of 23 the Dictation Consortium transaction was 24 the Flemish Government informed of the 25 facts that led you to conclude that that</p>	<p>230</p> <p>1 LOVE 2 from L&H that the side agreements were put 3 in place, and they kept those people out 4 of the public eye. 5 It's here, I mean, you know, who 6 did they inform? If they would inform 7 someone it may have been all over. The 8 bank knew it. The bank knew that they 9 were involved. It was a critical aspect 10 of it. One of the critical aspects of the 11 fraud was to hide it, and this is what 12 they did. 13 Q. Sir, you keep coming back to the 14 side agreements. Is it your testimony 15 that the reason that the Dictation 16 Consortium transaction lacked economic 17 substance is because of the side 18 agreement? 19 A. No, you questioned me on 20 something more than the economic 21 substance. I told you that there was -- 22 that we found that there was no economic 23 substance, okay, that the Belgium 24 Prosecutor I believe, who was the 25 government, found that there was no</p>
<p>1 LOVE 2 transaction had no economic substance? 3 MS. DYER: Objection to form. 4 A. I don't know if they were 5 informed or not. What I've seen leads me 6 to believe they had no economic substance 7 and what the bank saw or the bank's 8 lawyers saw led them to believe there was 9 no economic substance. 10 Q. If the Flemish Government had 11 been informed of all of the facts that you 12 think lead to the conclusion that the 13 transaction had no economic substance, 14 would it be your opinion that the Flemish 15 Government was in on the fraud? 16 MS. DYER: Objection to form. 17 A. The Flemish Government didn't 18 know about the side agreements so how 19 could they be in on the fraud? The fraud 20 was committed by the bank when they took 21 those relationships out of the public eye 22 and hid them in side agreements. 23 I see nothing and saw anything 24 anywhere that the bank informed anyone 25 other than Niko Willaert and the people</p>	<p>231</p> <p>1 LOVE 2 economic substance and that other people, 3 including the SEC, found that there was no 4 economic substance to these transactions, 5 and even if the Flemish Government knew 6 that there was no economic substance to 7 these transactions, what did it have to do 8 with the fraud? The fraud was committed 9 by your client and L&H and it was 10 committed through the side agreements. 11 Q. I'm just confused by your 12 answer, sir. Are you saying that the side 13 agreements are the reason why there's no 14 economic substance or not? 15 MS. DYER: Objection to form. 16 Asked and answered as well. 17 A. That's absolutely not what I 18 said, you know it's not what I said. 19 Q. I'm asking you what you said. 20 A. I said something entirely 21 different. The fact that the side letters 22 are not there has nothing to do with the 23 economic substance of the transaction. 24 The fact that the side letters 25 are there have a lot to do with misleading</p>

<p>1 LOVE 2 the Flemish Government and other people 3 who were interested in knowing what was 4 going on. There were other aspects to 5 this as well that are brought out in a lot 6 of the Bryan Cave report before they knew 7 of the related party activity of the bank, 8 and that had to do with a lot of other, 9 like the contract dates, when they were 10 signed, when the money was transferred, 11 it's all in the Bryan Cave report. So 12 there's a lot more to this fraud than just 13 the economic substance of the transaction. 14 Q. So I want to go back to my 15 question. I'm asking about the facts that 16 led you to conclude that there was no 17 economic substance to the transactions. 18 And my question is, if the 19 Flemish Government was fully informed of 20 those facts that led you to that 21 conclusion would you conclude that the 22 Flemish Government was in on the fraud? 23 MS. DYER: Objection to form. 24 Asked and answered. 25 A. And let me give you my answer</p>	<p>234</p> <p>1 LOVE 2 outlandishly speculative, unless you've 3 got a basis for answering that question 4 [sic], a factual basis, let me see the 5 factual basis you have and I'll take it 6 into consideration. 7 Q. I understand you are trying 8 to -- you want to be in a position to help 9 the jury reach the right conclusions about 10 this case, and my question is if the jury 11 concludes that the Flemish Government was 12 fully informed should they believe that 13 they were part of the fraud? 14 MS. DYER: Objection to form. 15 A. I said -- you said, you had left 16 out the side agreements, okay? The 17 Flemish -- you left out the absolute side 18 agreement as still speculative. 19 I'm not going to tell you what 20 the jury will decide, you'll present your 21 evidence to the jury. I'm just going to 22 present my opinions based upon the 23 evidence I've seen and any evidence that 24 comes out between now and the time I 25 testify at trial.</p>	<p>236</p>
<p>1 LOVE 2 once again. The Flemish Government didn't 3 have all of the facts. The Flemish 4 Government was asking for information and 5 that is why they're getting -- possibly 6 getting information. 7 Q. Isn't it possible, sir, that 8 the jury could conclude that the Flemish 9 Government had all the facts about the 10 structure of the transaction and the 11 nature of the parties involved? 12 MS. DYER: Objection to form. 13 Calls for speculation. 14 A. The jury, depending upon what 15 evidence you saw at the trial, can in the 16 realm of possibility come to that 17 conclusion; but if you have that 18 information let me see it and I'll change 19 my conclusion. 20 Maybe we'll put the Flemish 21 Government in here if they knew it was a 22 fraud and deliberately kept it quiet. But 23 I haven't seen that evidence anywhere in 24 the documents. 25 Your question is, in my mind,</p>	<p>235</p> <p>1 LOVE 2 Q. Okay, let's go to the next 3 excerpt that you cited from your report as 4 evidence that Mr. Faict understood the 5 accounting principles that are set forth 6 in Love Exhibit 6. 7 This is on page 33, you refer to 8 a memo from Mr. Mommens to Mr. Faict. 9 What is it in particular -- 10 A. Didn't I go down -- I'm sorry. 11 I thought the next one, and I may be 12 wrong, I didn't make notes of it -- but 13 didn't we go down into the second piece of 14 that, the fax included the letter -- the 15 fax included the letter excerpted on the 16 previous chart which further stated in 17 part, I said that also. 18 Q. I'm sorry, I don't follow, where 19 are you reading from? 20 A. Right below the last quote that 21 you have. 22 MS. DYER: Page 32 of your 23 report. 24 A. Page 32. 25 Q. I'm sorry, did you read this</p>	<p>237</p>

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<p>1 LOVE 2 other thing, too? 3 A. I thought I did. 4 Q. Oh, I missed that if you did. 5 So let's talk about that first. 6 This is a -- the fax included 7 the letter from the law firm, and we will 8 get to this letter later, I mean we will 9 talk about it in some detail; but if you 10 did mention that, what is it about the 11 contents of that letter that led you to 12 conclude that Mr. Faict understood the 13 accounting principles that are set forth 14 in Love Exhibit 6? 15 A. He read the letter. He read -- 16 Mr. Faict was not a delivery boy at the 17 bank, he was an officer of the bank, he 18 would be expected to read a letter that 19 he's sending off to the Flemish 20 Government, and that really takes these 21 related party and the R&D and puts some of 22 the -- some -- and says what they mean in 23 another way. 24 This is the way that's in the 25 standards, in the current text, not -- not</p>	238	<p>1 LOVE 2 All along the bank has got these 3 things on if we are to -- Lernout & 4 Hauspie wants revenue from this so we've 5 gotta keep any notification, we can't put 6 Mr. Lernout, Mr. Hauspie, Mr. Willaert, 7 Mr. Bastiens' names on these guarantees or 8 anywhere in the credit agreements, we 9 gotta get it outside. Okay. 10 Q. Are you finished? 11 A. So that's the stuff with Faict 12 throughout, and with the bank. 13 Q. Okay, well, we're going to come 14 back to this letter so I'll just move on 15 to the next one. 16 At the bottom of page 33 you 17 say that the memo from Mr. Mommens to 18 Mr. Faict also supports your conclusion 19 that Mr. Faict understood the accounting 20 principles in Love Exhibit 6? What is it, 21 in particular, about this memo that leads 22 you to that conclusion? 23 A. Here you have the head of the 24 bank, if you go back here and you look at 25 -- or if you look at what's required and</p>	240
<p>1 LOVE 2 the original pronouncement, and then he 3 says, it says in the letter. These are 4 the things that are in the letter. 5 Q. Do you know whether Mr. Faict 6 read this letter? 7 MS. DYER: Objection to form. 8 A. If he's sending on a letter to 9 the Flemish Government that he's stating 10 to the Flemish Government sets forth the 11 framework for U.S. GAAP, and he's an 12 officer of the bank, I have concerns about 13 what he's done. I don't -- 14 Q. Sir, do you know whether he read 15 the letter? 16 A. As I sit here now, no I'd have 17 to read his testimony, but from what I've 18 seen in the documents -- and you know 19 there's so many documents it's hard to 20 remember them all -- he is on credit 21 analyses or parts of the credit file that 22 deal with the implementation of this 23 related party issue, saying that they have 24 to be kept out of the loan agreement in 25 order to take it as revenue.</p>	239	<p>1 LOVE 2 what's been told to the bank, that they 3 need to have an economically -- a separate 4 company that has nothing to do with 5 Lernout & Hauspie and that they had to 6 have economic substance, economic 7 substance is always important, and this 8 is saying to -- to -- to Faict that this 9 thing is an artificial character of the 10 structure emerges is saying to Mr. Faict 11 what's going on here, his own attorney, 12 this is artificial. 13 Q. Sir, Love Exhibit 6, is it 14 correct to say that Love Exhibit 6 15 explains the U.S. GAAP for two issues, 16 related parties and research and 17 development arrangements; is that correct? 18 A. Yes. 19 Q. Is there anything about related 20 parties or research and development 21 arrangements in this memo from Mr. 22 Mommens? 23 A. The R&D current text talks about 24 the ability to repay and none of it coming 25 back to other parties or back to the</p>	241

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<p>1 LOVE 2 party. This has got to go back to the 3 letter that Mr. Faict has transmitted to 4 the Flemish Government; okay? 5 Q. Sir, I'm not asking you about 6 that letter. Please answer my question. 7 A. You asked me about Mr. Faict on 8 this, and Mr. Faict has more than this. 9 Q. I asked you a very specific 10 question, sir. 11 A. That's okay. 12 Q. My question is is there anything 13 in Mr. Mommens' memo about research and 14 development or related parties? 15 A. He's talking about L&HSP and the 16 law firm wanting to pass the risks of the 17 contracts' analysis and the securities to 18 be taken by Paribas, and asking if they 19 accept this. 20 He's talking about the factors 21 here that Dictation Consortium, that 22 received a license from L&HSP for a 23 technology with a license to further 24 develop it, DC then contracts out to LHSP 25 that also receives a commercialization</p>	<p>242</p> <p>1 LOVE 2 loan. 3 Q. Sir, I'm asking a very simple 4 question. You cited this memo as evidence 5 that Mr. Faict understood the U.S. GAAP 6 surrounding related party transactions and 7 research and development arrangements. 8 Is there anything in this memo 9 that discusses related party transactions 10 or research and development arrangements? 11 A. You are taking pieces out and 12 parsing them separately. We've got a 13 continuum here of different information he 14 received and letters that he's involved in 15 showing that there are related party or 16 potential party related activities. 17 You don't look at one piece of 18 it then go on to the next piece and ignore 19 everything else. 20 It's the entire -- this memo, to 21 me, along with the other evidence that's 22 on the record in here, leads me to believe 23 that if he didn't know about it he 24 certainly set it up so that they could -- 25 they could go around those regulations and</p>
<p>1 LOVE 2 order for DC. These are related party 3 issues. The extent of the contact between 4 the two different companies is a related 5 party -- can be a related party issue. 6 Q. Whether or not that could be a 7 related party issue, sir, my question is 8 is there anything in this memo that leads 9 you to believe Mr. Faict understood the 10 U.S. GAAP surrounding related parties? 11 MS. DYER: Objection to form. 12 Asked and answered. 13 A. I think I've been asking that 14 [sic] all the way along. 15 He's making representations 16 about U.S. GAAP to the Flemish Government. 17 He's sending on a letter from the 18 attorneys for LHS&P [sic]. Mr. Mommens 19 is talking about the transactions between 20 Dictation Consortium and LHSP. 21 If he's going to say he doesn't 22 know it, look, he can say he doesn't know 23 it and that he did all of these things, 24 made this loan without understanding 25 whether or not it was right to make the</p>	<p>243</p> <p>1 LOVE 2 record the revenue as income even though 3 it was fraudulent to do so. 4 Q. Sir, I can ask this question all 5 afternoon. Is there anything in this memo 6 that you cited as evidence that Mr. Faict 7 understood these accounting issues; is 8 there anything in this memo about related 9 party transactions or research and 10 development arrangements? 11 MS. DYER: Objection to form. 12 That has been asked and answered. 13 A. And, as you say, you can ask the 14 answer forever -- ask the question 15 forever, I'll give you my answer, because 16 that is my answer to your question. 17 Q. Sir, is there anything in this 18 memo that you cited that refers to related 19 party transactions or research and 20 development arrangements. If so, please 21 point me to the text that you're referring 22 to. 23 MS. DYER: Objection to the 24 form. Asked and answered. 25 A. These are all issues that relate</p>

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<p>1 LOVE 2 to related party transactions that are 3 included in here. 4 The contact between the parties, 5 the artificial character of the 6 structuring dealing with them, it's all 7 taken into consideration in determining 8 whether or not there's a related party. 9 You can't parse out little 10 pieces. It doesn't say related party in 11 here. It doesn't say -- well, it may say 12 R&D arrangement, no, no, it doesn't -- but 13 these are the issues that would relate to 14 both of those.</p> <p>15 Q. Thank you.</p> <p>16 Let me ask another question.</p> <p>17 Does this memo say -- I think that you 18 started an answer a while ago by saying 19 something about research and development 20 arrangements involving ability to repay.</p> <p>21 Does this memo from Mr. Mommens talk about 22 ability to repay?</p> <p>23 A. If there's an artificial 24 structure that's being set up -- and the 25 artificial structure that he's talking</p>	<p>246</p> <p>1 LOVE 2 You're taking one piece of it. 3 So this alone? No, not this alone. This 4 in concert with everything in the real 5 world and things don't happen the way you 6 want them to here. There's a lot of 7 knowledge and a lot of documents and those 8 all have got to be taken into 9 consideration.</p> <p>10 Q. Well, moving systematically 11 through the evidence that you cite that 12 Mr. Faict understood these accounting 13 principles. The next thing that you cite 14 is on page 34, which is a memo from Mr. 15 Audiart in the legal department of the 16 bank.</p> <p>17 What is it in this memo -- well, 18 first of all was this memo -- it indicates 19 it was sent to Mr. Faict, at least in your 20 outline -- what is it in this memo that 21 leads you to believe that Mr. Faict 22 understood the accounting principles 23 relating to related party transactions and 24 research and development arrangements?</p> <p>25 A. He's telling Mr. Faict from a</p>
<p>1 LOVE 2 about is on his point five -- We have to 3 determine that DC is an empty company 4 without customers, without contact with 5 customers and even without any commercial 6 activity, no company exists and for this 7 reason it's not possible to take a 8 warranty on the company, then the ability 9 to repay has got to come from the 10 guarantors of the loan and not from the 11 company.</p> <p>12 Q. So is it on that basis that you 13 conclude that based on this memorandum 14 Mr. Faict understood the accounting 15 principles associated with research and 16 development arrangements?</p> <p>17 MS. DYER: Objection to form.</p> <p>18 Asked and answered.</p> <p>19 A. We can go through this forever.</p> <p>20 I gave you other comments that were made 21 throughout my report and I also stated 22 that Mr. Faict's name is on a lot of the 23 analysis of the loan that's applying 24 related party and attempt to circumvent 25 the related party and R&D requirements.</p>	<p>247</p> <p>1 LOVE 2 legal perspective we do not understand the 3 economic goal that the parties strive to 4 accomplish by means of these actions. To 5 us, to the legal department, it seems that 6 only Lernout & Hauspie is developing and 7 commercializing the warehouse.</p> <p>8 A valid security would be a 9 pledge on the receivables of Dictation 10 towards Lernout & Hauspie; however, as 11 dictation appears to be a 100 percent 12 branch of Lernout & Hauspie, an event of 13 financial difficulties at one or the 14 other, the value of such pledge will be 15 random.</p> <p>16 He's talking to him about 17 related party criteria.</p> <p>18 Now this is coming off of having 19 this information from the law firm, from 20 the accounting firm, from the actual 21 standards themselves.</p> <p>22 Q. Well, sir, this --</p> <p>23 A. Why would he be talking to 24 Mr. Faict about this if Mr. Faict doesn't 25 understand it?</p>

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<p style="text-align: right;">250</p> <p>1 LOVE</p> <p>2 Q. Sir, what you just said though 3 is not true. This memo was written in 4 December of 1996; do you know when the 5 memo from the law firm was sent? Maybe I 6 have my chronology wrong.</p> <p>7 A. The Standards the Standards was 8 March of '96.</p> <p>9 Q. You know, I withdraw the 10 question. I think I have my chronology 11 wrong. Let me ask another question.</p> <p>12 You said that this memo 13 indicates that Mr. Audiart of the legal 14 department believed that Dictation was a 15 100 percent branch of Lernout & Hauspie. 16 Do you believe, sir, that Dictation 17 Consortium was a 100 percent branch of 18 Lernout & Hauspie?</p> <p>19 MS. DYER: Objection to form.</p> <p>20 A. I think it was a related party.</p> <p>21 Q. Is the answer no?</p> <p>22 MS. DYER: Objection to form.</p> <p>23 A. I don't know. I never sat down 24 and said -- first of all, it's not 25 operated as a branch so it would have to</p>	<p style="text-align: right;">252</p> <p>1 LOVE</p> <p>2 MS. DYER: Objection to form.</p> <p>3 A. He's saying it appears to be.</p> <p>4 It appears to be 100 percent owner. He's 5 not saying it is, he's saying it's acting 6 as is, probably, it appears to be.</p> <p>7 That's different than saying 8 that this is a 100 percent owned branch of 9 Lernout & Hauspie.</p> <p>10 He's taking a look at everything 11 and saying, boy, the relationship is very 12 tight here; this appears to be a branch 13 instead of what it's put out to be.</p> <p>14 Q. Do you know what Mr. Audiart was 15 thinking when he wrote those words?</p> <p>16 MS. DYER: Objection to form.</p> <p>17 A. I'm interpreting what is in 18 here. He says appears. It's a common 19 English word. It's not it is a branch, 20 okay?</p> <p>21 Q. Do you know whether this 22 document was written in English?</p> <p>23 MS. DYER: Are you finished, 24 Mr. Love? If not, please complete 25 your answer.</p>
<p style="text-align: right;">251</p> <p>1 LOVE</p> <p>2 be a 100 percent owned subsidiary, okay? 3 I'd have to sit down and look at 4 everything again.</p> <p>5 It's clearly a related party and 6 clearly the loan was made for the 7 financing of the -- that they used for the 8 LDC and for the research was financing 9 that in effect came from a related party, 10 L&H, which would lead you to the 11 conclusion that it could not be taken in 12 as revenue.</p> <p>13 Q. So is it correct, sir, that your 14 understanding is that Dictation Consortium 15 was not a 100 percent branch of Lernout & 16 Hauspie.</p> <p>17 A. He says it appears to be a 100 18 percent branch. It would not be a branch, 19 it could be something else but it's not a 20 branch.</p> <p>21 Q. Isn't it clear to you, sir, that 22 Mr. Audiart of the legal department was 23 misinformed about the nature of this 24 transaction?</p> <p>25 A. Not at all.</p>	<p style="text-align: right;">253</p> <p>1 LOVE</p> <p>2 A. No, he prefaced that with the 3 whole aspect of we do not understand the 4 economic goal, we don't understand because 5 Lernout & Hauspie is developing and 6 commercializing the software itself, why 7 Dictation is there; and of course, you 8 know, with hindsight if you go and fast 9 forward, they acquired Dictation, 10 Dictation becomes a part of L&H and of 11 course pays off the loans.</p> <p>12 Q. Well, at the time of the 13 transaction, sir, was Lernout & Hauspie 14 required to do that?</p> <p>15 A. Lernout & Hauspie's -- let me -- 16 they -- there was a commitment, supposedly 17 an oral, moral commitment to acquire 18 Dictation Consortium, and they did acquire 19 it. They said they were going to acquire 20 it.</p> <p>21 I'm sitting here now without all 22 of the files in front of me and going to a 23 specific file; but I think this is one of 24 the instances where that is in the record.</p> <p>25 Q. Well, going back to this memo</p>

<p>1 LOVE 2 from Mr. Audiart, do you know what 3 language this memo was written in? 4 A. No, I don't know if it's one of 5 the translated ones or one of the Flemish 6 ones. 7 Q. Do you know whether there has 8 been testimony in this case from Mr. 9 Audiart? 10 A. I believe there has been 11 testimony from him. 12 Q. Did you review that testimony to 13 prepare your report? 14 A. I personally didn't review it. 15 Q. Let's go to the next document 16 that you cite as evidence that Mr. Faict 17 understood these accounting principles. 18 MS. DYER: Before we move on 19 could we take a quick break? 20 MR. BUTLER: Sure. 21 MS. DYER: Thank you. 22 THE VIDEOGRAPHER: We're off the 23 record. The time is 4:04. This is 24 the end of tape four. 25 (Whereupon, a brief recess was</p>	<p>254</p> <p>1 LOVE 2 here, he refers to something political 3 games squeeze; do you have any idea what 4 was meant by? 5 A. That no, I don't. I think that 6 may be just that -- I don't know. I don't 7 know what was meant by that. It's 8 unusual. I think this is a translation. 9 I don't -- I don't know. It's just that 10 it's there, it's in the record that that's 11 the proper translation. 12 Q. Did you do anything to insure 13 yourself that you were reviewing accurate 14 translations of Dutch language documents? 15 MS. DYER: Objection to form. 16 A. We knew they were certified 17 translations. 18 Q. In cases where you saw English 19 phrases that you didn't understand or that 20 confused you, did you go back to the 21 translators and ask if some mistake might 22 been made? 23 MS. DYER: Objection to form. 24 A. No, I don't think I came across 25 any -- sharing money was one, but I looked</p>
<p>1 LOVE 2 taken). 3 THE VIDEOGRAPHER: We're back on 4 the record. The time is 4:18. This 5 is the beginning of tape five. 6 CONTINUED EXAMINATION BY MR. BUTLER: 7 Q. Mr. Love, I was directing your 8 attention before the break to page 35. 9 There is another excerpt which you quoted 10 as what you see as evidence that Mr. Faict 11 understood the accounting principles 12 associated with related parties and 13 research and development arrangements. 14 In this document your report 15 indicates that Mr. Faict is paraphrasing 16 the Brown Rudnick November 1996 letter. 17 Is it your understanding that that is what 18 he was doing in this document? 19 A. Yeah, if you go down and look at 20 bullet points, um, I would say that 21 that's paraphrasing it, not taking the 22 whole thing step-by-step, but summarizing 23 and paraphrasing what's -- what's needed. 24 Q. In this memo he refers to, or 25 based on your translation that you quote</p>	<p>255</p> <p>1 LOVE 2 it up and found out exactly what that was. 3 That's the one that was interesting, and I 4 just wanted to see what the translation of 5 it, the actual -- if I could find 6 something actually on it, and I found 7 things on it and so I was happy with that. 8 Q. What is it about this memo 9 that's referred to on this page that leads 10 you to the conclusion that Mr. Faict 11 understood the accounting principles 12 concerning related party transactions and 13 research and development arrangements? 14 A. Just what he says. It's 15 important that L&H -- to L&H that the fees 16 for development of Dictation Consortium 17 software made, under the American 18 accounting principles (U.S. GAAP), be 19 characterized as R&D fees and consequently 20 may be booked as income. 21 Well, he's saying that it's 22 important that under these standards 23 this -- that we -- that they want to 24 characterize this as R&D fees, to have the 25 fees for the development acknowledged as</p>

<p>1 LOVE 2 income for L&H, so he knows one way it's 3 not gonna be and one way it is gonna be, 4 otherwise why is he saying this? The 5 payments need to be non-repayable. 6 There's a condition that is in there, and 7 two, the transaction needs to have the 8 characteristics of a development agreement 9 between independent companies (arm's 10 length principle) so that it would not be 11 considered a financing operation. In the 12 event the transaction would be qualified 13 as a financing operation the U.S. 25 14 million would not the qualify as income 15 for L&H.</p> <p>16 And that's basically a 17 paraphrase. It even reads more into the 18 standard than is there, because there are 19 more specific bullet points, and in 20 essence he's got to the basic underlying 21 principle that led to some of the rules 22 that wind up in the standards themselves, 23 particularly the R&D standard.</p> <p>24 Q. You said that this memo reads 25 more into the standard than is there; what</p>	<p>258</p> <p>1 LOVE 2 into -- it reads -- it goes behind the 3 standard and gives a reason why the 4 standard is in place.</p> <p>5 Q. When you say "the standard," 6 are you referring to the research and 7 development arrangement standard or the 8 related party standard?</p> <p>9 A. The R&D standard, which also 10 refers to related party standard because 11 the R&D standard will talk about related 12 party.</p> <p>13 Q. Do you think that this memo is 14 an accurate characterization of the 15 research and development arrangement 16 standard under FAS 68?</p> <p>17 A. It is --</p> <p>18 MS. DYER: Objection to form.</p> <p>19 A. -- in very general terms, not 20 written by an accountant, it is. It's in 21 there. It's in the ballpark with a lot of 22 things that are in that standard.</p> <p>23 Q. And because it's in the ballpark 24 with a lot of things that are in that 25 standard that's what leads you to the</p>
<p>1 LOVE 2 did you mean by that? 3 A. Well, it says in the event the 4 transaction should be qualified as a 5 financing operation, the USD \$25 million 6 would not qualify as income; and that's 7 why you get the repayment portion of it, 8 the company would be repaying it, or that 9 related parties be involved.</p> <p>10 That, in essence, what then is 11 happening, it's a financing operation, 12 you're getting a loan to do your R&D and 13 you're not really one in the -- and you're 14 not two distinct operations, you're one 15 company, and you just set this up purely 16 to get the financing -- and you don't want 17 it to qualify for mere financing, you want 18 to qualify as a separate entity.</p> <p>19 Q. I'm afraid I don't understand 20 your answer, sir.</p> <p>21 A. Okay, I'm sorry.</p> <p>22 Q. I asked you what you meant when 23 you said that this memo reads more into 24 the standard than is there.</p> <p>25 A. No, what I'm saying is it reads</p>	<p>259</p> <p>1 LOVE 2 conclusion that Mr. Faict understood the 3 standard?</p> <p>4 MS. DYER: Objection to form.</p> <p>5 A. He couldn't -- he couldn't 6 paraphrase it like this unless he 7 understood it.</p> <p>8 Q. Is it your testimony, sir, that 9 a person can't paraphrase language without 10 understanding exactly what's being 11 paraphrased?</p> <p>12 MS. DYER: Objection to form.</p> <p>13 A. You can -- you can paraphrase 14 language taking it sentence-by-sentence or 15 piece-by-piece, but he's done more than 16 that here by going into not wanting the 17 transaction to qualify as a financing 18 operation and the like.</p> <p>19 It's -- it's -- to me, and it 20 may not be to you, but to me, and it's my 21 opinion it sounds like he understands 22 what's happening.</p> <p>23 Q. And from that document that's -- 24 strike that.</p> <p>25 Let's go to the next piece of</p>

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<p>1 LOVE 2 evidence that you refer to on page 37, I 3 think you referred to an August 5, 1996 4 memo to the Bank's Management Committee, 5 and you quoted the first -- the first 6 part of that memo that you said is from 7 Mr. Faict. 8 What is it about that language 9 that leads you to the conclusion that 10 Mr. Faict understood the accounting 11 standards associated with related party 12 transactions and research and development 13 arrangements? 14 A. Well, he understands the need to 15 find private investors. The connection 16 here with L&HSP found a number of private 17 investors, the family involved -- the 18 families involved in the start-up of 19 L&HSP, he knows enough to understand that 20 there is a connection between L&HSP. 21 Here's where the Flemish 22 Government comes in with the remaining 50 23 percent of the amount to be financed, the 24 Flemish Government and banks are 25 approached with the objective of finding</p>	<p>262</p> <p>1 LOVE 2 accounting principals relating to research 3 and development arrangements and related 4 party transactions? 5 A. I'm sorry, I missed. What part 6 did I quote? 7 Q. On page 38. 8 A. I'm talking about 37. Didn't I 9 quote -- didn't I touch on Mr. De Coen's 10 statement? 11 Q. I'm sorry, you're saying that I 12 missed one in between? 13 A. Yeah, on the bottom of 37. 14 MS. DYER: It was read into the 15 record. 16 Q. Okay, sir, well, I'll be happy 17 to ask you about that. 18 So this indicates that Mr. 19 De Coen stated in an internal bank memo 20 dated June 16, 1997. Do you know, was 21 Mr. Faict a recipient of this memo? 22 A. I don't know, and I said that, 23 that those -- I think we went to ones that 24 were directly related to him and then 25 others that were related to the bank and</p>
<p>1 LOVE 2 formulas to obtain it. 3 It's just written to me -- 4 again, it may not be to you -- written to 5 me that someone not totally knowledgeable, 6 it doesn't go right into the standards and 7 say here are the standards, but it's 8 someone that has the knowledge of the 9 corporate structure that you need to get 10 an R&D fee arrangement that he said in his 11 earlier quotes. 12 Q. Let's go to the next document 13 that you've cited. It's on page 38. 14 There's a quote that starts with the word 15 FLV. 16 A. Didn't I go down to the next 17 one with the colon and I said this was not 18 Mr. Faict, but it's the same thing, it's 19 the bank, and he's a part of that. 20 Q. Well, you can correct me if I'm 21 wrong, but I believe you quoted the 22 portion that begins "FLV was..." 23 So my question is is there 24 anything in that quote that leads you to 25 believe that Mr. Faict understood the</p>	<p>263</p> <p>1 LOVE 2 that he as the lending officer would be 3 involved in looking at the files and all 4 that sort of stuff. 5 Q. I just really want to focus on 6 the ones that relate to him. 7 So is this one of the ones that 8 relate to the bank's general knowledge as 9 opposed to Mr. Faict's personal knowledge? 10 A. Without the memo in front of me 11 and without any of the documents that I 12 can see if Mr. Faict could, saw this, read 13 this and agreed with this or went to him, 14 right now it's just a bank document that 15 shows that the lending people collectively 16 at the bank understood it. 17 Q. Okay, how about the next excerpt 18 that you quoted, which I think is the one 19 on page 38 that starts with "FLV..." 20 Is that one that leads you to 21 believe that Mr. Faict had an under- 22 standing or does that just have to do with 23 the bank's general understanding? 24 A. This is an internal bank 25 memorandum. If you got a copy of that --</p>

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<p>1 LOVE 2 I just have it down at the bottom with the 3 file number -- with the Bates number on 4 the document where it was included. So 5 right now, um, I would have to say that I 6 don't know if Mr. Faict got this or not. 7 Q. And is it fair to say that you 8 are not -- you don't know whether this -- 9 well, let's assume Mr. Faict did get this 10 document -- I don't know one way or the 11 other -- but if he did, is there anything 12 in the content of this document that leads 13 you to believe that Mr. Faict understood 14 the accounting principles associated with 15 related party transactions and research 16 and development arrangements? 17 A. Well, in here they're saying 18 that FLV was under the impulse of Lernout 19 & Hauspie, and it shows that in 20 structuring a loan where they did the side 21 agreements, that they had to know, that 22 they had to get these -- this in a side 23 agreement because all of this activity 24 could -- could demonstrate that -- that 25 they were a related party, that FLV was a</p>	<p>266</p> <p>1 LOVE 2 true, sir, there is nothing in that quote 3 that I just read to you about side 4 agreements or related parties? 5 A. That's correct. 6 Q. So what is it about the language 7 that I've just quoted that leads you to 8 conclude that Mr. Faict might be 9 knowledgeable about the accounting 10 principles associated with related 11 parties? 12 MS. DYER: Objection to form. 13 A. I didn't say that this was one 14 that was directly related to Mr. Faict. 15 This is one that's related to 16 the fact that the bank knows, that they 17 have FLV as a related party, it's under 18 the impulse of Mr. Lernout and Mr. 19 Hauspie. 20 Q. This document says that FLV 21 under the impulse of Mr. Lernout and Mr. 22 Hauspie was incorporated on December 22, 23 1995. 24 What relevance does that have to 25 whether there were related party issues in</p>
<p>1 LOVE 2 related party, which was disclosed in the 3 L&H work, um, the L&H financial 4 statements, I believe it is. 5 So if you know this is under the 6 impulse and is disclosed, you've got to 7 know that the others not being disclosed 8 that are occurring may also have problems. 9 So you have to know something about -- you 10 have to know something about related 11 parties and R&D to understand a lot of 12 what's being said in the lending files, 13 this being a piece of it. 14 Q. I'm having a little trouble 15 understanding your answer. 16 This quote says, quote, "FLV was 17 under the impulse of Mr. Lernout and Mr. 18 Hauspie incorporated on December 22, 1995 19 with the purpose of providing risk capital 20 to starting and growing companies within 21 the sector of language and speech 22 technology as well as promoting the 23 establishment of these companies in the 24 Ieper, Belgium region." 25 There is nothing -- isn't it</p>	<p>267</p> <p>1 LOVE 2 the Dictation Consortium transaction? 3 A. Excuse me. Where are you 4 reading from? Oh, okay. No, okay, that 5 that was incorporated by them in 1995 and 6 that's why it's a related party, but it's 7 under the impulse for the purpose of 8 providing risk capital to starting and 9 growing companies within the sector of 10 language. 11 So FLV was a related party, and 12 if FLV is connected with any of these 13 other loans that they had, to a company 14 that's connected with any of these other 15 loans, and I think FLV had an ownership in 16 one of them somewhere, that that was also 17 a related party, and that happened in DC, 18 but they never gave the full extent of the 19 fact that they had guaranteed the loans as 20 disclosure. 21 So it's, look, it's not 22 separately something that you point to 23 and says here he is saying that they -- 24 that they understand the principles. It's 25 saying based upon what I've found in the</p>

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<p>1 LOVE 2 files, all of it together, when you put it 3 all together, makes it clear that they 4 understood what the prohibitions [sic] 5 were and what related parties were. 6 Q. But there's nothing in this 7 phrase that I just quoted about related 8 parties or side agreements; correct? 9 A. That's correct. 10 Q. Let's go to the next document 11 that you cite, which I believe is on page 12 41. This is an expert -- an excerpt from 13 Mr. De Coen's testimony, and what is it 14 about this testimony that, if anything, 15 that leads you to the conclusion that 16 Mr. Faict understood the accounting 17 principles associated with related parties 18 and research and development arrangements?</p> <p>19 A. Well, the whole scheme to leave 20 it out was a scheme to mask the fact that 21 they were related parties.</p> <p>22 Look, if it doesn't matter 23 whether or not they guaranteed the loan, 24 then you'll normally find those guarantees 25 as part of the lending agreement.</p>	<p>270</p> <p>1 LOVE 2 A. You know, as I was going through 3 my answer I said, I stopped, this is 4 where, and I said this is where it's 5 directly with Mr. Faict, now here are 6 other things that shows that the bank, and 7 he's a bank officer, he's working on this 8 account, he should be aware of all this 9 stuff.</p> <p>10 Q. Sir, could you answer my 11 question. 12 Does this excerpt say anything 13 about whether Mr. Faict was aware of the 14 accounting principles that applied to 15 related party transactions and research 16 and development arrangements?</p> <p>17 A. No, and the rest of my answer 18 that I gave before comes right after that, 19 and I won't repeat it.</p> <p>20 Q. Thank you. 21 Could you turn to page 49 where 22 I think the next excerpt is that you 23 quoted. 24 The description of this document 25 begins on page 48. You say that it's an</p>
<p>271</p> <p>1 LOVE 2 As a matter of fact, as I 3 recall, the internal auditor said under 4 Belgian regulations those guarantees had 5 to be in the lending agreements. 6 So now he's saying that this 7 Dictation Consortium, were you involved 8 in any other loan aside from that, that 9 was excluded from the agreement, he's 10 saying I don't recall. It's not a normal 11 occurrence. 12 It was done here for a 13 particular purpose, and there's more 14 testimony on that, too, it's done at the 15 request of Lernout & Hauspie, they didn't 16 want it in there because they didn't want 17 to be associated with it and everything 18 they got they said if you're associated 19 with it they're not going to be able to 20 take the revenue into income. 21 Q. Sir, did Mr. De Coen say 22 anything in this excerpt about whether Mr. 23 Faict understood the accounting principles 24 that applied to related party transactions 25 and research and development arrangements?</p>	<p>273</p> <p>1 LOVE 2 internal memo from Juris Van Helleputte. 3 It doesn't indicate here who it was sent 4 to. Do you know whether this memo was 5 given to Mr. Faict?</p> <p>6 A. No. 7 Q. Is this one of documents that's 8 just generally about the bank's knowledge 9 or is this a document that's specific to 10 Mr. Faict? 11 A. This is generally about the 12 bank's knowledge, that these things are 13 generally part of the credit files for 14 this account, and Mr. Faict -- Faict was 15 involved with this account, and that's the 16 connection I draw to it. 17 Q. In this document Mr. Van 18 Helleputte says, and I'm quoting the 19 portion that you underscored at the end of 20 the first paragraph, quote, "In view of 21 the public nature of the NV L&H, the U.S. 22 GAAP rules must be implemented in a very 23 stringent manner and the SEC will monitor 24 this very closely." 25 Does that language that I've</p>

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